

Republic of the Philippines  
**SUPREME COURT**  
Baguio City

FIRST DIVISION

**G.R. No. 187495**                      **April 21, 2014**

**PEOPLE OF THE PHILIPPINES**, Plaintiff-Appellee,  
vs.  
**EDGAR JUMAWAN**, Accused-Appellant.

D E C I S I O N

"Among the duties assumed by the husband are his duties to love, cherish and protect his wife, to give her a home, to provide her with the comforts and the necessities of life within his means, to treat her kindly and not cruelly or inhumanely. He is bound to honor her x x x; it is his duty not only to maintain and support her, but also to protect her from oppression and wrong."<sup>1</sup>

**REYES, J.:**

Husbands do not have property rights over their wives' bodies. Sexual intercourse, albeit within the realm of marriage, if not consensual, is rape. This is the clear State policy expressly legislated in Section 266-A of the Revised Penal Code (RPC), as amended by Republic Act (R.A.) No. 8353 or the Anti-Rape Law of 1997.

The Case

This is an automatic review<sup>2</sup> of the Decision<sup>3</sup> dated July 9, 2008 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00353, which affirmed the Judgment<sup>4</sup> dated April 1, 2002 of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 19, in Criminal Case Nos. 99-668 and 99-669 convicting him to suffer the penalty of reclusion perpetua for each count.

The Facts

Accused-appellant and his wife, KKK,<sup>5</sup> were married on October 18, 1975. They lived together since then and raised their four (4) children<sup>6</sup> as they put up several businesses over the years.

On February 19, 1999, KKK executed a Complaint-Affidavit,<sup>7</sup> alleging that her husband, the accused-appellant, raped her at 3 :00 a.m. of December 3, 1998 at their residence in Phase 2, Villa Ernesto, Gusa, Cagayan de Oro City, and that on December 12, 1998, the accused-appellant boxed her shoulder for refusing to have sex with him.

On June 11, 1999, the Office of the City Prosecutor of Cagayan de Oro City issued a Joint Resolution,<sup>8</sup> finding probable cause for grave threats, less serious physical injuries and rape and recommending that the appropriate criminal information be filed against the accused-appellant.

On July 16, 1999, two Informations for rape were filed before the RTC respectively docketed as Criminal Case No. 99-668<sup>9</sup> and Criminal Case No. 99-669.<sup>10</sup> The Information in Criminal Case No. 99-668 charged the accused-appellant as follows:

That on or about 10:30 in the evening more or less, of October 9, 1998, at Gusa, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by means of force upon person did then and there wilfully, unlawfully and feloniously have carnal knowledge with the private complainant, her [sic] wife, against the latter[']s will.

Contrary to and in Violation of R.A. 8353, the Anti-Rape Law of 1997.

Meanwhile the Information in Criminal Case No. 99-669 reads:

That on or about 10:30 in the evening more or less, of October 10, 1998, at Gusa, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by means of force upon person did then and there wilfully, unlawfully and feloniously have carnal knowledge with the private complainant, her [sic] wife, against the latter's will.

Contrary to and in Violation of R.A. 8353, the Anti-Rape Law of 1997.

The accused-appellant was arrested upon a warrant issued on July 21, 1999.<sup>11</sup> On August 18, 1999, the accused-appellant filed a Motion for Reinvestigation,<sup>12</sup> which was denied by the trial court in an Order<sup>13</sup> dated August 19, 1999. On even date, the accused-appellant was arraigned and he entered a plea of not guilty to both charges.<sup>14</sup>

On January 10, 2000, the prosecution filed a Motion to Admit Amended Information<sup>15</sup> averring that the name of the private complainant was omitted in the original informations for rape. The motion also stated that KKK, thru a Supplemental Affidavit dated November 15, 1999,<sup>16</sup> attested that the true dates of commission of the crime are October 16, 1998 and October 17, 1998 thereby modifying the dates stated in her previous complaint-affidavit. The motion was granted on January 18, 2000.<sup>17</sup> Accordingly, the criminal informations were amended as follows:

Criminal Case No. 99-668:

That on or about October 16, 1998 at Gusa, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by means of force upon person did then and there wilfully, unlawfully and feloniously have carnal knowledge with the private complainant, his wife, [KKK], against the latter's will.

Contrary to and in violation of R.A. 8353, the Anti-Rape Law of 1997.<sup>18</sup>

Criminal Case No. 99-669:

That on or about October 17, 1998 at Gusa, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by means of force upon person did then and there wilfully, unlawfully and feloniously have carnal knowledge with the private complainant, his wife, [KKK], against the latter's will.

Contrary to and in violation of R.A. 8353, the Anti-Rape Law of 1997.<sup>19</sup>

The accused-appellant was thereafter re-arraigned. He maintained his not guilty plea to both indictments and a joint trial of the two cases forthwith ensued.

Version of the prosecution

The prosecution's theory was anchored on the testimonies of KKK, and her daughters MMM and OOO, which, together with pertinent physical evidence, depicted the following events:

KKK met the accused-appellant at the farm of her parents where his father was one of the laborers. They got married after a year of courtship.<sup>20</sup> When their first child, MMM, was born, KKK and the accused-appellant put up a sari-sari store.<sup>21</sup> Later on, they engaged in several other businesses - trucking, rice mill and hardware. KKK managed the businesses except for the rice mill, which, ideally, was under the accused-appellant's supervision with the help of a trusted employee. In reality, however, he merely assisted in the rice mill business by occasionally driving one of the trucks to haul goods.<sup>22</sup>

Accused-appellant's keenness to make the businesses flourish was not as fervent as KKK's dedication. Even the daughters observed the disproportionate labors of their parents.<sup>23</sup> He would drive the trucks sometimes but KKK was the one who actively managed the businesses.<sup>24</sup>

She wanted to provide a comfortable life for their children; he, on the other hand, did not acquiesce with that objective.<sup>25</sup>

In 1994, KKK and the accused-appellant bought a lot and built a house in Villa Ernesto, Gusa, Cagayan de Oro City.<sup>26</sup> Three of the children transferred residence therein while KKK, the accused-appellant and one of their sons stayed in Dangcagan, Bukidnon. She shuttled between the two places regularly and sometimes he accompanied her.<sup>27</sup> In 1998, KKK stayed in Gusa, Cagayan De Oro City most of the days of the week.<sup>28</sup> On Wednesdays, she went to Dangcagan, Bukidnon to procure supplies for the family store and then returned to Cagayan de Oro City on the same day.<sup>29</sup>

Conjugal intimacy did not really cause marital problems between KKK and the accused-appellant. It was, in fact, both frequent and fulfilling. He treated her well and she, of course, responded with equal degree of enthusiasm.<sup>30</sup> However, in 1997, he started to be brutal in bed. He would immediately remove her panties and, sans any foreplay, insert her penis in her vagina. His abridged method of lovemaking was physically painful for her so she would resist his sexual ambush but he would threaten her into submission.<sup>31</sup>

In 1998, KKK and the accused-appellant started quarrelling usually upon his complaint that she failed to attend to him. She was preoccupied with financial problems in their businesses and a bank loan. He wanted KKK to stay at home because "a woman must stay in the house and only good in bed (sic) x x x." She disobeyed his wishes and focused on her goal of providing a good future for the children.<sup>32</sup>

Four days before the subject rape incidents or on October 12, 1998, KKK and the accused-appellant slept together in Cebu City where the graduation rites of their eldest daughter were held. By October 14, 1998, the three of them were already back in Cagayan de Oro City.<sup>33</sup>

On October 16, 1998, the accused-appellant, his wife KKK and their children went about their nightly routine. The family store in their residence was closed at about 9:00 p.m. before supper was taken. Afterwards, KKK and the children went to the girls' bedroom at the mezzanine of the house to pray the rosary while the accused-appellant watched television in the living room.<sup>34</sup> OOO and MMM then prepared their beds. Soon after, the accused-appellant fetched KKK and bid her to come with him to their conjugal bedroom in the third floor of the house. KKK complied.<sup>35</sup>

Once in the bedroom, KKK changed into a daster and fixed the matrimonial bed but she did not lie thereon with the accused-appellant and instead, rested separately in a cot near the bed. Her

reclusive behavior prompted him to ask angrily: "[W]hy are you lying on the c{o}t[?]", and to instantaneously order: "You transfer here [to] our bed."<sup>36</sup>

KKK insisted to stay on the cot and explained that she had headache and abdominal pain due to her forthcoming menstruation. Her reasons did not appease him and he got angrier. He rose from the bed, lifted the cot and threw it against the wall causing KKK to fall on the floor. Terrified, KKK stood up from where she fell, took her pillow and transferred to the bed.<sup>37</sup>

The accused-appellant then lay beside KKK and not before long, expressed his desire to copulate with her by tapping his fingers on her lap. She politely declined by warding off his hand and reiterating that she was not feeling well.<sup>38</sup>

The accused-appellant again asserted his sexual yearning and when KKK tried to resist by holding on to her panties, he pulled them down so forcefully they tore on the sides.<sup>39</sup> KKK stayed defiant by refusing to bend her legs.<sup>40</sup>

The accused-appellant then raised KKK's daster,<sup>41</sup> stretched her legs apart and rested his own legs on them. She tried to wrestle him away but he held her hands and succeeded in penetrating her. As he was carrying out his carnal desires, KKK continued to protest by desperately shouting: "[D]on 't do that to me because I'm not feeling well."<sup>42</sup>

With a concrete wall on one side and a mere wooden partition on the other enclosing the spouses' bedroom,<sup>43</sup> KKK's pleas were audible in the children's bedroom where MMM lay awake.

Upon hearing her mother crying and hysterically shouting: "Eddie, don't do that to me, have pity on me,"<sup>44</sup> MMM woke up 000 who prodded her to go to their parents' room.<sup>45</sup> MMM hurriedly climbed upstairs, vigorously knocked on the door of her parents' bedroom and inquired: "Pa, why is it that Mama is crying?"<sup>46</sup> The accused-appellant then quickly put on his briefs and shirt, partly opened the door and said: "[D]on 't interfere because this is a family trouble," before closing it again.<sup>47</sup> Since she heard her mother continue to cry, MMM ignored his father's admonition, knocked at the bedroom door again, and then kicked it.<sup>48</sup> A furious accused-appellant opened the door wider and rebuked MMM once more: "Don't interfere us. Go downstairs because this is family trouble!" Upon seeing KKK crouching and crying on top of the bed, MMM boldly entered the room, approached her mother and asked: "Ma, why are you crying?" before asking her father: "Pa, what happened to Mama why is it that her underwear is torn[?]"<sup>49</sup>

When MMM received no definite answers to her questions, she helped her mother get up in order to bring her to the girls' bedroom. KKK then picked up her torn underwear and covered herself with a blanket.<sup>50</sup> However, their breakout from the room was not easy. To prevent KKK from leaving, the accused-appellant blocked the doorway by extending his arm towards the knob. He commanded KKK to "[S]tay here, you sleep in our room," when the trembling KKK pleaded: "Eddie, allow me to go out." He then held KKK's hands but she pulled them back. Determined to get away, MMM leaned against door and embraced her mother tightly as they pushed their way out.<sup>51</sup>

In their bedroom, the girls gave their mother some water and queried her as to what happened.<sup>52</sup> KKK relayed: "[Y]our father is an animal, a beast; he forced me to have sex with him when I'm not feeling well." The girls then locked the door and let her rest."<sup>53</sup>

The accused-appellant's aggression recurred the following night. After closing the family store on October 17, 1998, KKK and the children took their supper. The accused-appellant did not join them since, according to him, he already ate dinner elsewhere. After resting for a short while, KKK and the children proceeded to the girls' bedroom and prayed the rosary. KKK decided to spend the night in

the room's small bed and the girls were already fixing the beddings when the accused-appellant entered.

"Why are you sleeping in the room of our children", he asked KKK, who responded that she preferred to sleep with the children.<sup>54</sup> He then scoffed: "Its alright if you will not go with me, anyway, there are women that could be paid [P] 1,000.00." She dismissed his comment by turning her head away after retorting: "So be it." After that, he left the room.<sup>55</sup>

He returned 15 minutes later<sup>56</sup> and when KKK still refused to go with him, he became infuriated. He lifted her from the bed and attempted to carry her out of the room as he exclaimed: "Why will you sleep here[?] Lets go to our bedroom." When she defied him, he grabbed her short pants causing them to tear apart.<sup>57</sup> At this point, MMM interfered, "Pa, don't do that to Mama because we are in front of you."<sup>58</sup>

The presence of his children apparently did not pacify the accused-appellant who yelled, "[E]ven in front of you, I can have sex of your mother [sic] because I'm the head of the family." He then ordered his daughters to leave the room. Frightened, the girls obliged and went to the staircase where they subsequently heard the pleas of their helpless mother resonate with the creaking bed.<sup>59</sup>

The episodes in the bedroom were no less disturbing. The accused-appellant forcibly pulled KKK's short pants and panties. He paid no heed as she begged, "[D]on't do that to me, my body is still aching and also my abdomen and I cannot do what you wanted me to do [sic]. I cannot withstand sex."<sup>60</sup>

After removing his own short pants and briefs, he flexed her legs, held her hands, mounted her and forced himself inside her. Once gratified, the accused-appellant put on his short pants and briefs, stood up, and went out of the room laughing as he conceitedly uttered: "[I]t s nice, that is what you deserve because you are [a] flirt or fond of sex." He then retreated to the masters' bedroom.<sup>61</sup>

Sensing that the commotion in their bedroom has ceased, MMM and OOO scurried upstairs but found the door locked. MMM pulled out a jalousie window, inserted her arm, reached for the doorknob inside and disengaged its lock. Upon entering the room, MMM and OOO found their mother crouched on the bed with her hair disheveled. The girls asked: "Ma, what happened to you, why are you crying?" KKK replied: "[Y]our father is a beast and animal, he again forced me to have sex with him even if I don't feel well."<sup>62</sup>

#### Version of the defense

The defense spun a different tale. The accused-appellant's father owned a land adjacent to that of KKK's father. He came to know KKK because she brought food for her father's laborers. When they got married on October 18, 1975, he was a high school graduate while she was an elementary graduate.

Their humble educational background did not deter them from pursuing a comfortable life. Through their joint hard work and efforts, the couple gradually acquired personal properties and established their own businesses that included a rice mill managed by the accused-appellant. He also drove their trucks that hauled coffee, copra, or com.<sup>63</sup>

The accused-appellant denied raping his wife on October 16 and 17, 1998. He claimed that on those dates he was in Danggagan, Bukidnon, peeling com. On October 7, his truck met an accident somewhere in Angeles Ranch, Maluko, Manolo Fortich, Bukidnon. He left the truck by the roadside because he had to attend MMM's graduation in Cebu on October 12 with KKK. When they returned

to Bukidnon on October 14, he asked KKK and MMM to proceed to Cagayan de Oro City and just leave him behind so he can take care of the truck and buy some com.<sup>64</sup>

Ryle Equia (Equia), the spouses' driver from January 1996 until June 1999 corroborated the above claims. According to him, on October 16, 1998, the accused-appellant was within the vicinity of the rice mill's loading area in Dangcagan, Bukidnon, cleaning a pick-up truck. On October 17, 1998, he and the accused-appellant were in Dangcagan, Bukidnon, loading sacks of com into the truck. They finished loading at 3 :00 p.m. The accused-appellant then instructed Equia to proceed to Maluko, Manolo Fortich, Bukidnon while the former attended a fiesta in New Cebu, Kianggat, Dangcagan, Bukidnon. At around 4:00 p.m., Equia, together with a helper and a mechanic, left for Maluko in order to tow the stalled truck left there by the accused-appellant in October 7 and thereafter, bring it to Cagayan de Oro City together with the separate truck loaded with com.

They arrived in Maluko at 7:00 p.m. and it took them three hours to turn the truck around and hoist it to the towing bar of the other truck. At around 10:00 p.m., the accused-appellant arrived in Maluko. The four of them then proceeded to Cagayan de Oro City where they arrived at 3 :00 a.m. of October 18, 1998. The accused-appellant went to Gusa while the other three men brought the damaged truck to Cugman.<sup>65</sup>

The accused-appellant asserted that KKK merely fabricated the rape charges as her revenge because he took over the control and management of their businesses as well as the possession of their pick-up truck in January 1999. The accused-appellant was provoked to do so when she failed to account for their bank deposits and business earnings. The entries in their bank account showed the balance of ₱3,190,539.83 on October 31, 1996 but after only a month or on November 30, 1996, the amount dwindled to a measly ₱9,894.88.<sup>66</sup> Her failure to immediately report to the police also belies her rape allegations.<sup>67</sup>

KKK wanted to cover-up her extra-marital affairs, which the accused-appellant gradually detected from her odd behavior. While in Cebu on October 12, 1998 for MMM's graduation rites, the accused-appellant and KKK had sexual intercourse. He was surprised when his wife asked him to get a napkin to wipe her after having sex. He tagged her request as "high-tech," because they did not do the same when they had sex in the past. KKK had also become increasingly indifferent to him. When he arrives home, it was an employee, not her, who opened the door and welcomed him. She prettied herself and would no longer ask for his permission whenever she went out.<sup>68</sup>

Bebs,<sup>69</sup> KKK's cousin and a cashier in their Bukidnon store, gave the accused-appellant several love letters purportedly addressed to Bebs but were actually intended for KKK.<sup>70</sup>

KKK had more than ten paramours some of whom the accused-appellant came to know as: Arsenio, Jong-Jong, Joy or Joey, somebody from the military or the Philippine National Police, another one is a government employee, a certain Fernandez and three other priests.<sup>71</sup> Several persons told him about the paramours of his wife but he never confronted her or them about it because he trusted her.<sup>72</sup>

What further confirmed his suspicions was the statement made by OOO on November 2, 1998. At that time, OOO was listening loudly to a cassette player. Since he wanted to watch a television program, he asked OOO to tum down the volume of the cassette player. She got annoyed, unplugged the player, spinned around and hit the accused-appellant's head with the socket. His head bled. An altercation between the accused-appellant and KKK thereafter followed because the latter took OOO's side. During the argument, OOO blurted out that KKK was better off without the accused-appellant because she had somebody young, handsome, and a businessman unlike the accused-appellant who smelled bad, and was old, and ugly.<sup>73</sup>

KKK also wanted their property divided between them with three-fourths thereof going to her and one-fourth to the accused-appellant. However, the separation did not push through because the accused-appellant's parents intervened.<sup>74</sup> Thereafter, KKK pursued legal separation from the accused-appellant by initiating Barangay Case No. 00588-99 before the Office of Lupong Tagapamayapa of Gusa, Cagayan de Oro City and thereafter obtaining a Certificate to File Action dated February 18, 1999.<sup>75</sup>

#### Ruling of the RTC

In its Judgment<sup>76</sup> dated April 1, 2002, the RTC sustained the version proffered by the prosecution by giving greater weight and credence to the spontaneous and straightforward testimonies of the prosecution's witnesses. The trial court also upheld as sincere and genuine the two daughters' testimonies, as it is not natural in our culture for daughters to testify against their own father for a crime such as rape if the same was not truly committed.

The trial court rejected the version of the defense and found unbelievable the accused-appellant's accusations of extra-marital affairs and money squandering against KKK. The trial court shelved the accused-appellant's alibi for being premised on inconsistent testimonies and the contradicting declarations of the other defense witness, Equia, as to the accused-appellant's actual whereabouts on October 16, 1998. Accordingly, the RTC ruling disposed as follows:

WHEREFORE, the Court hereby finds accused Edgar Jumawan "GUILTY" beyond reasonable doubt of the two (2) separate charges of rape and hereby sentences him to suffer the penalty of reclusion perpetua for each, to pay complainant [P]50,000.00 in each case as moral damages, indemnify complainant the sum of (P]75,000.00 in each case, [P]50,000.00 as exemplary damages and to pay the costs.

SO ORDERED.<sup>77</sup>

#### Ruling of the CA

In its Decision<sup>78</sup> dated July 9, 2008, the CA affirmed in toto the RTC ruling. The CA held that Section 14, Rule 110 of the Rules of Criminal Procedure, sanctioned the amendment of the original informations. Further, the accused-appellant was not prejudiced by the amendment because he was re-arraigned with respect to the amended informations.

The CA found that the prosecution, through the straightforward testimony of the victim herself and the corroborative declarations of MMM and OOO, was able to establish, beyond reasonable doubt, all the elements of rape under R.A. No. 8353. The accused-appellant had carnal knowledge of KKK by using force and intimidation.

The CA also ruled that KKK's failure to submit herself to medical examination did not negate the commission of the crime because a medical certificate is not necessary to prove rape.

The CA rejected the accused-appellant's argument that since he and KKK are husband and wife with mutual obligations of and right to sexual intercourse, there must be convincing physical evidence or manifestations of the alleged force and intimidation used upon KKK such as bruises. The CA explained that physical showing of external injuries is not indispensable to prosecute and convict a person for rape; what is necessary is that the victim was forced to have sexual intercourse with the accused.

In addition, the CA noted that the fact that KKK and the accused-appellant are spouses only reinforces the truthfulness of KKK's accusations because no wife in her right mind would accuse her husband of having raped her if it were not true.

The delay in the filing of the rape complaint was sufficiently explained by KKK when she stated that she only found out that a wife may charge his husband with rape when the fiscal investigating her separate complaint for grave threats and physical injuries told her about it.

Finally, the CA dismissed the accused-appellant's alibi for lack of convincing evidence that it was physically impossible for him to be at his residence in Cagayan de Oro City at the time of the commission of the crimes, considering that Dangcagan, Bukidnon, the place where he allegedly was, is only about four or five hours away. Accordingly, the decretal portion of the decision read:

WHEREFORE, in the light of the foregoing, the appealed Judgment is hereby AFFIRMED.

SO ORDERED.<sup>79</sup>

Hence, the present review. In the Court Resolution<sup>80</sup> dated July 6, 2009, the Court notified the parties that, if they so desire, they may file their respective supplemental briefs. In a Manifestation and Motion<sup>81</sup> dated September 4, 2009, the appellee, through the Office of the Solicitor General, expressed that it intends to adopt its Brief before the CA. On April 16, 2012, the accused-appellant, through counsel, filed his Supplemental Brief, arguing that he was not in Cagayan de Oro City when the alleged rape incidents took place, and the presence of force, threat or intimidation is negated by: (a) KKK's voluntary act of going with him to the conjugal bedroom on October 16, 1998; (b) KKK's failure to put up resistance or seek help from police authorities; and (c) the absence of a medical certificate and of blood traces in KKK's panties.<sup>82</sup>

## Our Ruling

### **I. Rape and marriage: the historical connection**

The evolution of rape laws is actually traced to two ancient English practices of 'bride capture' whereby a man conquered a woman through rape and 'stealing an heiress' whereby a man abducted a woman and married her.<sup>83</sup>

The rape laws then were intended not to redress the violation of the woman's chastity but rather to punish the act of obtaining the heiress' property by forcible marriage<sup>84</sup> or to protect a man's valuable interest in his wife's chastity or her daughter's virginity.<sup>85</sup>

If a man raped an unmarried virgin, he was guilty of stealing her father's property and if a man raped his wife, he was merely using his property.<sup>86</sup>

Women were subjugated in laws and society as objects or goods and such treatment was justified under three ideologies.

Under the chattel theory prevalent during the 6th century, a woman was the property of her father until she marries to become the property of her husband.<sup>87</sup> If a man abducted an unmarried woman, he had to pay the owner, and later buy her from the owner; buying and marrying a wife were synonymous.<sup>88</sup>



From the 11th century to the 16th century, a woman lost her identity upon marriage and the law denied her political power and status under the feudal doctrine of coverture.<sup>89</sup>

A husband had the right to chastise his wife and beat her if she misbehaved, allowing him to bring order within the family.<sup>90</sup>

This was supplanted by the marital unity theory, which espoused a similar concept. Upon marrying, the woman becomes one with her husband. She had no right to make a contract, sue another, own personal property or write a will.<sup>91</sup>

## II. The marital exemption rule

In the 17th century, Sir Matthew Hale (Hale), a Chief Justice in England, conceived the irrevocable implied consent theory that would later on emerge as the marital exemption rule in rape. He stated that:

[T]he husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract.<sup>92</sup>

The rule was observed in common law countries such as the United States of America (USA) and England. It gives legal immunity to a man who forcibly sexually assaults his wife, an act which would be rape if committed against a woman not his wife.<sup>93</sup> In those jurisdictions, rape is traditionally defined as "the forcible penetration of the body of a woman who is not the wife of the perpetrator."<sup>94</sup>

The first case in the USA that applied the marital exemption rule was *Commonwealth v. Fogerty*<sup>95</sup> promulgated in 1857. The Supreme Judicial Court of Massachusetts pronounced that it would always be a defense in rape to show marriage to the victim. Several other courts adhered to a similar rationale with all of them citing Hale's theory as basis.<sup>96</sup>

The rule was formally codified in the Penal Code of New York in 1909. A husband was endowed with absolute immunity from prosecution for the rape of his wife.<sup>97</sup> The privilege was personal and pertained to him alone. He had the marital right to rape his wife but he will be liable when he aids or abets another person in raping her.<sup>98</sup>

In the 1970s, the rule was challenged by women's movements in the USA demanding for its abolition for being violative of married women's right to be equally protected under rape laws.<sup>99</sup>

In 1978, the rule was qualified by the Legislature in New York by proscribing the application of the rule in cases where the husband and wife are living apart pursuant to a court order "which by its terms or in its effects requires such living apart," or a decree, judgment or written agreement of separation.<sup>100</sup>

In 1983, the marital exemption rule was abandoned in New York when the Court of Appeals of New York declared the same unconstitutional in *People v. Liberta*<sup>101</sup> for lack of rational basis in distinguishing between marital rape and non-marital rape. The decision, which also renounced Hale's irrevocable implied consent theory, ratiocinated as follows:

We find that there is no rational basis for distinguishing between marital rape and nonmarital rape. The various rationales which have been asserted in defense of the exemption are either based upon archaic notions about the consent and property rights incident to marriage or are simply unable to

withstand even the slightest scrutiny. We therefore declare the marital exemption for rape in the New York statute to be unconstitutional.

Lord Hale's notion of an irrevocable implied consent by a married woman to sexual intercourse has been cited most frequently in support of the marital exemption. x x x Any argument based on a supposed consent, however, is untenable. Rape is not simply a sexual act to which one party does not consent. Rather, it is a degrading, violent act which violates the bodily integrity of the victim and frequently causes severe, long-lasting physical and psychic harm x x x. To ever imply consent to such an act is irrational and absurd. Other than in the context of rape statutes, marriage has never been viewed as giving a husband the right to coerced intercourse on demand x x x. Certainly, then, a marriage license should not be viewed as a license for a husband to forcibly rape his wife with impunity. A married woman has the same right to control her own body as does an unmarried woman x x x. If a husband feels "aggrieved" by his wife's refusal to engage in sexual intercourse, he should seek relief in the courts governing domestic relations, not in "violent or forceful self-help x x x."

The other traditional justifications for the marital exemption were the common-law doctrines that a woman was the property of her husband and that the legal existence of the woman was "incorporated and consolidated into that of the husband x x x." Both these doctrines, of course, have long been rejected in this State. Indeed, "[nowhere] in the common-law world - [or] in any modern society - is a woman regarded as chattel or demeaned by denial of a separate legal identity and the dignity associated with recognition as a whole human being x x x."<sup>102</sup> (Citations omitted)

By 1993, marital rape was a crime in all 50 states, with 17 of them, as well as the District of Columbia, outlawing the act without exemptions. Meanwhile, the 33 other states granted some exemptions to a husband from prosecution such as when the wife is mentally or physically impaired, unconscious, asleep, or legally unable to consent.<sup>103</sup>

### **III. Marital Rape in the Philippines**

Interestingly, no documented case on marital rape has ever reached this Court until now. It appears, however, that the old provisions of rape under Article 335 of the RPC adhered to Hale's irrevocable implied consent theory, albeit in a limited form. According to Chief Justice Ramon C. Aquino,<sup>104</sup> a husband may not be guilty of rape under Article 335 of Act No. 3815 but, in case there is legal separation, the husband should be held guilty of rape if he forces his wife to submit to sexual intercourse.<sup>105</sup>

In 1981, the Philippines joined 180 countries in ratifying the United Nations Convention on the Elimination of all Forms of Discrimination Against Women (UN-CEDAW).<sup>106</sup> Hailed as the first international women's bill of rights, the CEDAW is the first major instrument that contains a ban on all forms of discrimination against women. The Philippines assumed the role of promoting gender equality and women's empowerment as a vital element in addressing global concerns.<sup>107</sup> The country also committed, among others, to condemn discrimination against women in all its forms, and agreed to pursue, by all appropriate means and without delay, a policy of eliminating discrimination against women and, to this end, undertook:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

X X X X

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.<sup>108</sup>

In compliance with the foregoing international commitments, the Philippines enshrined the principle of gender equality in the 1987 Constitution specifically in Sections 11 and 14 of Article II thereof, thus:

Sec. 11. The State values the dignity of every human person and guarantees full respect for human rights.

X X X X

Sec. 14. The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men. The Philippines also acceded to adopt and implement the generally accepted principles of international law such as the CEDAW and its allied issuances, viz:

Article II, Section 2. The Philippines renounces war as an instrument of national policy, and adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations. (Emphasis ours)

The Legislature then pursued the enactment of laws to propagate gender equality. In 1997, R.A. No. 8353 eradicated the stereotype concept of rape in Article 335 of the RPC.<sup>109</sup> The law reclassified rape as a crime against person and removed it from the ambit of crimes against chastity. More particular to the present case, and perhaps the law's most progressive proviso is the 2nd paragraph of Section 2 thereof recognizing the reality of marital rape and criminalizing its perpetration, viz:

Article 266-C. Effect of Pardon. - The subsequent valid marriage between the offended party shall extinguish the criminal action or the penalty imposed.

In case it is the legal husband who is the offender, the subsequent forgiveness by the wife as the offended party shall extinguish the criminal action or the penalty: Provided, That the crime shall not be extinguished or the penalty shall not be abated if the marriage is void ab initio.

Read together with Section 1 of the law, which unqualifiedly uses the term "man" in defining rape, it is unmistakable that R.A. No. 8353 penalizes the crime without regard to the rapist's legal relationship with his victim, thus:

Article 266-A. Rape: When And How Committed. - Rape is committed:

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

The explicit intent to outlaw marital rape is deducible from the records of the deliberations of the 10th Congress on the law's progenitor's, House Bill No. 6265 and Senate Bill No. 650. In spite of qualms on tagging the crime as 'marital rape' due to conservative Filipino impressions on marriage, the consensus of our lawmakers was clearly to include and penalize marital rape under the general definition of 'rape,' viz:

MR. DAMASING: Madam Speaker, Your Honor, one more point

of clarification in the House version on Anti-Rape Bill, House Bill No. 6265, we never agreed to marital rape. But under Article 266-C, it says here: "In case it is the legal husband who is the offender..." Does this presuppose that there is now marital rape? x x x.

MR. LARA: x x x [!]n this jurisdiction, well, I only have a limited, very limited 17 years of private practice in the legal profession, Madam Speaker, and I believe that I can put at stake my license as a lawyer in this jurisdiction there is no law that prohibits a husband from being sued by the wife for rape. Even jurisprudence, we don't have any jurisprudence that prohibits a wife from suing a husband. That is why even if we don't provide in this bill expanding the definition of crime that is now being presented for approval, Madam Speaker, even if we don't provide here for marital rape, even if we don't provide for sexual rape, there is the right of the wife to go against the husband. The wife can sue the husband for marital rape and she cannot be prevented from doing so because in this jurisdiction there is no law that prohibits her from doing so. This is why we had to put second paragraph of 266-C because it is the belief of many of us. x x x, that if it is true that in this jurisdiction there is marital rape even if we don't provide it here, then we must provide for something that will unify and keep the cohesion of the family together that is why we have the second paragraph.

MR. DAMASING: Madam Speaker, Your Honor, under the House version specifically House Bill No. 6265 our provision on a husband forcing the wife is not marital rape, it is marital sexual assault.

MR. LARA: That is correct, Madam Speaker.

MR. DAMASING: But here it is marital rape because there is no crime of sexual assault. So, Your Honor, direct to the point, under Article 266-C, is it our understanding that in the second paragraph, quote: "In case it is the legal husband who is the offender, this refers to marital rape filed against the husband? Is that correct?

MR. LARA: No, Madam Speaker, not entirely, no. The answer is no.

MR. DAMASING: So if the husband is guilty of sexual assault, what do you call- it?

MR. LARA: Sexual assault, Madam Speaker.

MR. DAMASING: There is no crime of sexual assault, Your Honor, we have already stated that. Because under 1 and 2 it is all denominated as rape, there is no crime of sexual assault. That is why I am sorry that our House version which provided for sexual assault was not carried by the Senate version because all sexual crimes under this bicameral conference committee report are all now

denominated as rape whether the penalty is from reclusion perpetua to death or whether the penalty is only prison mayor. So there is marital rape, Your Honor, is that correct?

x x x x

MR. DAMASING: Madam Speaker, Your Honor, I am in favor of this. I am in favor of punishing the husband who forces the wife even to 30 years imprisonment. But please do not call it marital rape, call it marital sexual assault because of the sanctity of marriage. x x x.<sup>110</sup> (Emphasis ours)

HON. APOSTOL: In our version, we did not mention marital rape but marital rape is not excluded.

HON. ROCO: Yeah. No. But I think there is also no specific mention.

HON. APOSTOL: No. No. No. Silent lang 'yung marital rape.

x x x x

HON. ROCO: xx x [I]f we can retain the effect of pardon, then this marital rape can be implicitly contained in the second paragraph. x x x So marital rape actually was in the House version x x x. But it was not another definition of rape. You will notice, it only says, that because you are the lawful husband does not mean that you cannot commit rape. Theoretically, I mean, you can beat up your wife until she's blue. And if the wife complains she was raped, I guess that, I mean, you just cannot raise the defense x x x[:] I am the husband. But where in the marriage contract does it say that I can beat you up? That's all it means. That is why if we stop referring to it as marital rape, acceptance is easy. Because parang ang marital rape, married na nga kami. I cannot have sex. No, what it is saying is you're [the] husband but you cannot beat me up. x x x. That's why to me it's not alarming. It was just a way of saying you're [the] husband, you cannot say when I am charged with rape x x x.

PRESIDING OFFICER SHAHAN!: All right, so how do you propose it if we put it in[?]

HON. ROCO: x x x [A]ll we are saying [is] that if you are the lawful husband does not mean you can have carnal knowledge by force[,] threat or intimidation or by depriving your wife reason, a grave abuse of authority, I don't know how that cannot apply. Di ba yung, or putting an instrument into the, yun ang sinasabi ko lang, it is not meant to have another classification of rape. It is all the same definition x x x.

x x x x

HON.ROCO: What is 266-F? x x x. Now if we can retain 266-F x x x, we can say that this rule is implicit already in the first proviso. It implies na there is an instance when a husband can be charged [with] rape x x x.

HON. ROXAS: Otherwise, silent na.

HON. ROCO: Otherwise, we are silent na. So parang i-delete natin ito. But it is understood that this rule of evidence is now transport[ed], put into 266-F, the effect of pardon.

PRESIDING OFFICER APOSTOL: We will retain this effect of pardon. We will remove marital rape.

HON. ROCO: No, yun ang, oo we will remove this one on page 3 but we will retain the one on page 8, the effect of pardon. x x x [I]t is inferred but we leave it because after all it is just a rule of

evidence. But I think we should understand that a husband cannot beat at his wife to have sex. Di ha? I think that should be made clear. x x x.

x x x x

HON. ROCO: x x x [W]e are not defining a crime of marital rape. All we are saying is that if you're [the] legal husband, Jesus Christ, don't beat up to have sex. I almost want, you are my wife, why do you have to beat me up.

So, ganoon. So, if we both justify it that way in the Report as inferred in proviso, I mean, we can face up, I hope, to the women and they would understand that it is half achieved.

HON. ZAMORA: I think, Raul, as long as we understand that we are not defining or creating a new crime but instead, we are just defining a rule of evidence. x x x.

HON. ROCO: Then, in which case we may just want to clarify as a rule of evidence the fact that he is husband is not, does not negate.<sup>111</sup>

CHAIRMAN LARA: x x x We all agree on the substance of the point in discussion. The only disagreement now is where to place it. Let us clear this matter. There are two suggestions now on marital rape. One is that it is rape if it is done with force or intimidation or any of the circumstances that would define rape x x x immaterial. The fact that the husband and wife are separated does not come into the picture. So even if they are living under one roof x x x for as long as the attendant circumstances of the traditional rape is present, then that is rape.<sup>112</sup>

PRESIDING OFFICER ANGARA-CASTILLO: Mr. Chairman, x x x [t]his provision on marital rape, it does not actually change the meaning of rape. It merely erases the doubt in anybody's mind, whether or not rape can indeed be committed by the husband against the wife. So the bill really says, you having been married to one another is not a legal impediment. So I don't really think there is any need to change the concept of rape as defined presently under the revised penal code. This do[es] not actually add anything to the definition of rape. It merely says, it is merely clarificatory. That if indeed the wife has evidence to show that she was really brow beaten, or whatever or forced or intimidated into having sexual intercourse against her will, then the crime of rape has been committed against her by the husband, notwithstanding the fact that they have been legally married. It does not change anything at all, Mr. Chairman.

PRESIDING OFFICER APOSTOL: Yes, I think, there is no change on this x x x.<sup>113</sup>

The paradigm shift on marital rape in the Philippine jurisdiction is further affirmed by R.A. No. 9262,<sup>114</sup> which regards rape within marriage as a form of sexual violence that may be committed by a man against his wife within or outside the family abode, viz:

Violence against women and their children refers to any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in. physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty. It includes, but is not limited to, the following acts:

A. "Physical Violence" refers to acts that include bodily or physical harm;

B. "Sexual violence" refers to an act which is sexual in nature, committed against a woman or her child. It includes, but is not limited to:

- a) rape, sexual harassment, acts of lasciviousness, treating a woman or her child as a sex object, making demeaning and sexually suggestive remarks, physically attacking the sexual parts of the victim's body, forcing her/him to watch obscene publications and indecent shows or forcing the woman or her child to do indecent acts and/or make films thereof, forcing the wife and mistress/lover to live in the conjugal home or sleep together in the same room with the abuser;
- b) acts causing or attempting to cause the victim to engage in any sexual activity by force, threat of force, physical or other harm or threat of physical or other harm or coercion;
- c) Prostituting the woman or child.

Statistical figures confirm the above characterization. Emotional and other forms of non-personal violence are the most common type of spousal violence accounting for 23% incidence among ever-married women. One in seven ever-married women experienced physical violence by their husbands while eight percent (8%) experienced sexual violence.<sup>115</sup>

#### **IV. Refutation of the accused-appellant's arguments**

The crux of the accused-appellant's plea for acquittal mirrors the irrevocable implied consent theory. In his appeal brief before the CA, he posits that the two incidents of sexual intercourse, which gave rise to the criminal charges for rape, were theoretically consensual, obligatory even, because he and the victim, KKK, were a legally married and cohabiting couple. He argues that consent to copulation is presumed between cohabiting husband and wife unless the contrary is proved.

The accused-appellant further claims that this case should be viewed and treated differently from ordinary rape cases and that the standards for determining the presence of consent or lack thereof must be adjusted on the ground that sexual community is a mutual right and obligation between husband and wife.<sup>116</sup>

The contentions failed to muster legal and rational merit.

The ancient customs and ideologies from which the irrevocable implied consent theory evolved have already been superseded by modern global principles on the equality of rights between men and women and respect for human dignity established in various international conventions, such as the CEDAW. The Philippines, as State Party to the CEDAW, recognized that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between them. Accordingly, the country vowed to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices, customs and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.<sup>117</sup> One of such measures is R.A. No 8353 insofar as it eradicated the archaic notion that marital rape cannot exist because a husband has absolute proprietary rights over his wife's body and thus her consent to every act of sexual intimacy with him is always obligatory or at least, presumed.

Another important international instrument on gender equality is the UN Declaration on the Elimination of Violence Against Women, which was Promulgated<sup>118</sup> by the UN General Assembly subsequent to the CEDAW. The Declaration, in enumerating the forms of gender-based violence

that constitute acts of discrimination against women, identified 'marital rape' as a species of sexual violence, viz:

#### Article 1

For the purposes of this Declaration, the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

#### Article 2

Violence against women shall be understood to encompass, but not be limited to, the following:

(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;<sup>119</sup> (Emphasis ours)

Clearly, it is now acknowledged that rape, as a form of sexual violence, exists within marriage. A man who penetrates her wife without her consent or against her will commits sexual violence upon her, and the Philippines, as a State Party to the CEDAW and its accompanying Declaration, defines and penalizes the act as rape under R.A. No. 8353.

A woman is no longer the chattel-antiquated practices labeled her to be. A husband who has sexual intercourse with his wife is not merely using a property, he is fulfilling a marital consortium with a fellow human being with dignity equal<sup>120</sup> to that he accords himself. He cannot be permitted to violate this dignity by coercing her to engage in a sexual act without her full and free consent. Surely, the Philippines cannot renege on its international commitments and accommodate conservative yet irrational notions on marital activities<sup>121</sup> that have lost their relevance in a progressive society.

It is true that the Family Code,<sup>122</sup> obligates the spouses to love one another but this rule sanctions affection and sexual intimacy, as expressions of love, that are both spontaneous and mutual<sup>123</sup> and not the kind which is unilaterally exacted by force or coercion.

Further, the delicate and reverent nature of sexual intimacy between a husband and wife excludes cruelty and coercion. Sexual intimacy brings spouses wholeness and oneness. It is a gift and a participation in the mystery of creation. It is a deep sense of spiritual communion. It is a function which enlivens the hope of procreation and ensures the continuation of family relations. It is an expressive interest in each other's feelings at a time it is needed by the other and it can go a long way in deepening marital relationship.<sup>124</sup> When it is egoistically utilized to despoil marital union in order to advance a felonious urge for coitus by force, violence or intimidation, the Court will step in to protect its lofty purpose, vindicate justice and protect our laws and State policies. Besides, a husband who feels aggrieved by his indifferent or uninterested wife's absolute refusal to engage in sexual intimacy may legally seek the court's intervention to declare her psychologically incapacitated to fulfill an essential marital obligation.<sup>125</sup> But he cannot and should not demand sexual intimacy from her coercively or violently.

Moreover, to treat marital rape cases differently from non-marital rape cases in terms of the elements that constitute the crime and in the rules for their proof, infringes on the equal protection clause. The Constitutional right to equal protection of the laws<sup>126</sup> ordains that similar subjects should not be treated differently, so as to give undue favor to some and unjustly discriminate against others;



no person or class of persons shall be denied the same protection of laws, which is enjoyed, by other persons or other classes in like circumstances.<sup>127</sup>

As above discussed, the definition of rape in Section 1 of R.A. No. 8353 pertains to: (a) rape, as traditionally known; (b) sexual assault; and (c) marital rape or that where the victim is the perpetrator's own spouse. The single definition for all three forms of the crime shows that the law does not distinguish between rape committed in wedlock and those committed without a marriage. Hence, the law affords protection to women raped by their husband and those raped by any other man alike.

The posture advanced by the accused-appellant arbitrarily discriminates against married rape victims over unmarried rape victims because it withholds from married women raped by their husbands the penal redress equally granted by law to all rape victims.

Further, the Court adheres to and hereby adopts the rationale in *Liberta* in rejecting the argument akin to those raised by herein accused-appellant. A marriage license should not be viewed as a license for a husband to forcibly rape his wife with impunity. A married woman has the same right to control her own body, as does an unmarried woman.<sup>128</sup> She can give or withhold her consent to a sexual intercourse with her husband and he cannot unlawfully wrestle such consent from her in case she refuses.

Lastly, the human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence.<sup>129</sup> Women do not divest themselves of such right by contracting marriage for the simple reason that human rights are inalienable.<sup>130</sup>

In fine, since the law does not separately categorize marital rape and non-marital rape nor provide for different definition or elements for either, the Court, tasked to interpret and apply what the law dictates, cannot trudge the forbidden sphere of judicial legislation and unlawfully divert from what the law sets forth. Neither can the Court frame distinct or stricter evidentiary rules for marital rape cases as it would inequitably burden its victims and unreasonably and irrationally classify them differently from the victims of non-marital rape.

Indeed, there exists no legal or rational reason for the Court to apply the law and the evidentiary rules on rape any differently if the aggressor is the woman's own legal husband. The elements and quantum of proof that support a moral certainty of guilt in rape cases should apply uniformly regardless of the legal relationship between the accused and his accuser.

Thus, the Court meticulously reviewed the present case in accordance with the established legal principles and evidentiary policies in the prosecution and resolution of rape cases and found that no reversible error can be imputed to the conviction meted the accused-appellant.

The evidence for the prosecution was based on credible witnesses who gave equally credible testimonies

In rape cases, the conviction of the accused rests heavily on the credibility of the victim. Hence, the strict mandate that all courts must examine thoroughly the testimony of the offended party. While the accused in a rape case may be convicted solely on the testimony of the complaining witness, courts are, nonetheless, duty-bound to establish that their reliance on the victim's testimony is justified. Courts must ensure that the testimony is credible, convincing, and otherwise consistent with human

nature. If the testimony of the complainant meets the test of credibility, the accused may be convicted on the basis thereof.<sup>131</sup>

It is settled that the evaluation by the trial court of the credibility of witnesses and their testimonies are entitled to the highest respect. This is in view of its inimitable opportunity to directly observe the witnesses and their deportment, conduct and attitude, especially during cross-examination. Thus, unless it is shown that its evaluation was tainted with arbitrariness or certain facts of substance and value have been plainly overlooked, misunderstood, or misapplied, the same will not be disturbed on appeal.<sup>132</sup>

After approximating the perspective of the trial court thru a meticulous scrutiny of the entire records of the trial proceedings and the transcript of each witnesses' testimony, the Court found no justification to disturb its findings.

Rather, the Court observed that KKK and her testimony were both credible and spontaneous. Hailed to the witness stand on six separate occasions, KKK never wavered neither did her statements vacillate between uncertainty and certitude. She remained consistent, categorical, straightforward, and candid during the rigorous cross-examination and on rebuttal examination, she was able to convincingly explain and debunk the allegations of the defense.

She vividly recounted how the accused-appellant forced her to have sex with him despite her refusal on October 16, 1998. He initially ordered her to sleep beside him in their conjugal bed by violently throwing the cot where she was resting. In order not to aggravate his temper, KKK obeyed. On the bed, he insinuated for them to have sex. When she rejected his advances due to abdominal pain and headache, his request for intimacy transformed into a stubborn demand. Unyielding, KKK held her panties but the accused-appellant forcibly pulled them down. The tug caused the small clothing to tear apart. She reiterated that she was not feeling well and begged him to stop. But no amount of resistance or begging subdued him. He flexed her two legs apart, gripped her hands, mounted her, rested his own legs on hers and inserted his penis into her vagina. She continued pleading but he never desisted.<sup>133</sup>

Her accurate recollection of the second rape incident on October 17, 1998 is likewise unmistakable. After the appalling episode in the conjugal bedroom the previous night, KKK decided to sleep in the children's bedroom. While her daughters were fixing the beddings, the accused-appellant barged into the room and berated her for refusing to go with him to their conjugal bedroom. When KKK insisted to stay in the children's bedroom, the accused-appellant got angry and pulled her up. MMM's attempt to pacify the accused-appellant further enraged him. He reminded them that as the head of the family he could do whatever he wants with his wife. To demonstrate his role as patriarch, he ordered the children to go out of the room and thereafter proceeded to force KKK into sexual intercourse. He forcibly pulled down her short pants and panties as KKK begged "Dont do that to me, my body is still aching and also my abdomen and I cannot do what you wanted me to do. I cannot withstand sex."<sup>134</sup> But her pleas fell on deaf ears. The accused-appellant removed his shorts and briefs, spread KKK's legs apart, held her hands, mounted her and inserted his penis into her vagina. After gratifying himself, he got dressed, left the room as he chuckled: "Its nice, that is what you deserve because you are [a] flirt or fond of sex."<sup>135</sup>

Entrenched is the rule that in the prosecution of rape cases, the essential element that must be proved is the absence of the victim's consent to the sexual congress.<sup>136</sup>

Under the law, consent is absent when: (a) it was wrestled from the victim by force, threat or intimidation, fraudulent machinations or grave abuse of authority; or (b) the victim is incapable of

giving free and voluntary consent because he/she is deprived of reason or otherwise unconscious or that the offended party is under 12 years of age or is demented.

Contrary to the accused-appellant's asseverations, KKK's consent was wrestled from her through force and intimidation both of which were established beyond moral certainty by the prosecution through the pertinent testimony of KKK, viz:

On the October 16, 1998 rape incident:

(Direct Examination)

ATTY. LARGO:

Q So, while you were already lying on the bed together with your husband, do you remember what happened?

A He lie down beside me and asked me to have sex with him.

Q How did he manifest that he wanted to have sex with you?

A He put his hand on my lap and asked me to have sex with him but I warded off his hand.

Q Can you demonstrate to this Court how did he use his hand?

A Yes. "witness demonstrating on how the accused used his finger by touching or knocking her lap which means that he wanted to have sex."

Q So, what did you do after that?

A I warded off his hand and refused because I was not feeling well. (at this juncture the witness is sobbing)

Q So, what did your husband do when you refused him to have sex with you?

A He insisted and he pulled my pantie forcibly, that is why my pantie [sic] was tom.

Q Why, what did you do when he started to pull your pantie [sic]?

A I resisted and tried to hold my pantie [sic] but I failed, because he is so strong.

xx xx

Q So, when your pantie [sic] was tom by your husband, what else did he do?

A He flexed my two legs and rested his two legs on my legs.

Q So after that what else did he do?

A He succeeded in having sex with me because he held my two hands no matter how I wrestled but I failed because he is stronger than me.

COURT: Make it of record that the witness is sobbing while she is giving her testimony.

ATTY. LARGO: (To the witness cont'ng.)

Q So, what did you do when your husband already stretched your two legs and rode on you and held your two hands?

A I told him, "don't do that because I'm not feeling well and my whole body is aching."

Q How did you say that to your husband?

A I told him, "don't do that to me because I'm not feeling well."

Q Did you say that in the manner you are saying now?

x x x x

A I shouted when I uttered that words.

x x x x

Q Was your husband able to consummate his desire?

x x x x

A Yes, sir, because I cannot do anything.<sup>137</sup>

(Cross-Examination)

ATTY. AMARGA;

Q Every time you have sex with your husband it was your husband normally remove your panty?

A Yes, Sir.

Q It was not unusual for your husband then to remove your panty because according to you he normally do that if he have sex with you?

A Yes, Sir.

Q And finally according to you your husband have sex with you?

A Yes, Sir because he forcibly used me in spite of holding my panty because I don't want to have sex with him at that time.

Q You did not spread your legs at that time when he removed your panty?

A Yes, Sir.

Q Meaning, your position of your legs was normal during that time?

A I tried to resist by not flexing my legs.

X X X X

Q At that time when your husband allegedly removed your panty he also remove your nightgown?

A No, Sir.

Q And he did pull out your duster [sic] towards your face?

A He raised my duster [sic] up.

Q In other words your face was covered when he raised your duster [sic]?

A No, only on the breast level.<sup>138</sup>

On the October 17, 1998 rape incident:

(Direct Examination)

ATTY. LARGO

Q So, after your children went out of the room, what transpired?

A He successfully having sex with me because he pulled my short pant and pantie forcible.

Q So, what did you say when he forcibly pulled your short and pantie?

A I told him, "don't do that to me, my body is still aching and also my abdomen and I cannot do what you wanted me to do. I cannot withstand sex."

Q So, what happened to your short when he forcibly pulled it down?

A It was tom.

Q And after your short and pantie was pulled down by your husband, what did he do?

A He also removed his short and brief and flexed my two legs and mounted on me and succeeded in having sex with me.<sup>139</sup>

The accused-appellant forced his wife when he knowingly overpowered her by gripping her hands, flexing her legs and then resting his own legs thereon in order to facilitate the consummation of his much-desired non-consensual sexual intercourse.

Records also show that the accused-appellant employed sufficient intimidation upon KKK. His actuations prior to the actual moment of the felonious coitus revealed that he imposed his distorted sense of moral authority on his wife. He furiously demanded for her to lay with him on the bed and thereafter coerced her to indulge his sexual craving.

The fury the accused-appellant exhibited when KKK refused to sleep with him on their bed, when she insisted to sleep in the children's bedroom and the fact that he exercises dominance over her as husband all cowed KKK into submission.

The fact that KKK voluntarily went with the accused-appellant to their conjugal bedroom on October 16, 1998 cannot be stretched to mean that she consented to the forced sexual intercourse that ensued. The accused-appellant was KKK's husband and hence it was customary for her to sleep in the conjugal bedroom. No consent can be deduced from such act of KKK because at that juncture there were no indications that sexual intercourse was about to take place. The issue of consent was still irrelevant since the act for which the same is legally required did not exist yet or at least unclear to the person from whom the consent was desired. The significant point when consent must be given is at that time when it is clear to the victim that her aggressor is soliciting sexual congress. In this case, that point is when the accused-appellant tapped his fingers on her lap, a gesture KKK comprehended to be an invitation for a sexual intercourse, which she refused.

Resistance, medical certificate and blood traces.

We cannot give credence to the accused-appellant's argument that KKK should have hit him to convey that she was resisting his sexual onslaught. Resistance is not an element of rape and the law does not impose upon the victim the burden to prove resistance<sup>140</sup> much more requires her to raise a specific kind thereof.

At any rate, KKK put up persistent, audible and intelligible resistance for the accused-appellant to recognize that she seriously did not assent to a sexual congress. She held on to her panties to prevent him from undressing her, she refused to bend her legs and she repeatedly shouted and begged for him to stop.

Moreover, as an element of rape, force or intimidation need not be irresistible; it may be just enough to bring about the desired result. What is necessary is that the force or intimidation be sufficient to consummate the purpose that the accused had in mind<sup>141</sup> or is of such a degree as to impel the defenseless and hapless victim to bow into submission.<sup>142</sup>

Contrary to the accused-appellant's allusions, the absence of blood traces in KKK's panties or the lack of a medical certificate do not negate rape. It is not the presence or absence of blood on the victim's underwear that determines the fact of rape<sup>143</sup> inasmuch as a medical certificate is dispensable evidence that is not necessary to prove rape.<sup>144</sup> These details do not pertain to the elements that produce the gravamen of the offense that is -sexual intercourse with a woman against her will or without her consent.<sup>145</sup>

The accused-appellant harps on the acquittal ruling in *People v. Godoy*,<sup>146</sup> the evidentiary circumstances of which are, however, disparate from those in the present case. In *Godoy*, the testimony of the complainant was inherently weak, inconsistent, and was controverted by the prosecution's medico-legal expert witness who stated that force was not applied based on the position of her hymenal laceration. This led the Court to conclude that the absence of any sign of physical violence on the victim's body is an indication of consent.<sup>147</sup> Here, however, KKK's testimony is, as discussed earlier, credible, spontaneous and forthright.

The corroborative testimonies of MMM and OOO are worthy of credence.

The accused-appellant's assertion that MMM and OOO's testimonies lacked probative value as they did not witness the actual rape is bereft of merit. It must be stressed that rape is essentially

committed in relative isolation, thus, it is usually only the victim who can testify with regard to the fact of the forced sexual intercourse.<sup>148</sup> Hence, the probative value of MMM and OOO's testimonies rest not on whether they actually witnessed the rape but on whether their declarations were in harmony with KKK's narration of the circumstances, preceding, subsequent to and concurrent with, the rape incidents.

MMM and OOO's testimonies substantiated significant points in KKK's narration. MMM heard KKK shouting and crying: "Eddie, don't do that to me, have pity on me"<sup>149</sup> on the night of October 16, 1998 shortly after KKK and the accused-appellant went to their conjugal bedroom. When MMM went upstairs to check on her mother, the accused-appellant admonished her for meddling. Frustrated to aid her mother who persistently cried, MMM kicked the door so hard the accused-appellant was prompted to open it and rebuke MMM once more. OOO heard all these commotion from the room downstairs.

MMM then saw her mother crouched on the bed, crying, with her hair disheveled while her tom panty lay on the floor. After a brief struggle with the accused-appellant, MMM and KKK were finally able to escape and retreat to the children's bedroom where KKK narrated to her daughters: "[Y]our father is an animal, a beast; he forced me to have sex with him when I'm not feeling well. "

KKK gave a similar narration to MMM and OOO the following night after the accused-appellant barged inside the children's bedroom. The couple had an argument and when MMM tried to interfere, the accused-appellant ordered her and OOO to get out after bragging that he can have sex with his wife even in front of the children because he is the head of the family. The girls then stayed by the staircase where they afterwards heard their mother helplessly crying and shouting for the accused-appellant to stop.

Indeed, the testimonies of KKK, MMM and OOO coherently depicted that the accused-appellant, through the use of force and intimidation, had non-consensual and forced carnal knowledge of his wife, KKK on the nights of October 16 and 17, 1998.

KKK's helpless screams and pleas from inside the bedroom coupled with her verbal and physical resistance were clear manifestations of coercion. Her appearance when MMM saw her on the bed after the accused appellant opened the door on October 16, 1998, her conduct towards the accused-appellant on her way out of the room, and her categorical outcry to her children after the two bedroom episodes - all generate the conclusion that the sexual acts that occurred were against her will.

Failure to immediately report to the police authorities, if satisfactorily explained, is not fatal to the credibility of a witness.

The testimonies of KKK and her daughters cannot be discredited merely because they failed to report the rape incidents to the police authorities or that KKK belatedly filed the rape charges. Delay or vacillation by the victims in reporting sexual assaults does not necessarily impair their credibility if such delay is satisfactorily explained.<sup>150</sup>

At that time, KKK and her daughters were not aware that a husband forcing his wife to submit to sexual intercourse is considered rape. In fact, KKK only found out that she could sue his husband for rape when Prosecutor Benjamin Tabique, Jr. (Prosecutor Tabique) told her about it when she filed the separate charges for grave threats and physical injuries against the accused-appellant.<sup>151</sup>

It must be noted that the incidents occurred a year into the effectivity of R.A. No. 8353 abolishing marital exemption in rape cases hence it is understandable that it was not yet known to a layman as opposed to legal professionals like Prosecutor Tabique. In addition, fear of reprisal thru social humiliation which is the common factor that deter rape victims from reporting the crime to the authorities is more cumbersome in marital rape cases. This is in view of the popular yet outdated belief that it is the wife's absolute obligation to submit to her husband's carnal desires. A husband raping his own wife is often dismissed as a peculiar occurrence or trivialized as simple domestic trouble.

Unfamiliarity with or lack of knowledge of the law criminalizing marital rape, the stigma and public scrutiny that could have befallen KKK and her family had the intervention of police authorities or even the neighbors been sought, are acceptable explanations for the failure or delay in reporting the subject rape incidents.

The victim -S testimony on the witness stand rendered unnecessary the presentation of her complaint-affidavit as evidence.

The failure of the prosecution to present KKK's complaint-affidavit for rape is not fatal in view of the credible, candid and positive testimony of KKK on the witness stand. Testimonial evidence carries more weight than the affidavit since it underwent the rudiments of a direct, cross, re-direct and re-cross examinations. Affidavits or statements taken ex parte are generally considered incomplete and inaccurate. Thus, by nature, they are inferior to testimony given in court.<sup>152</sup>

Ill motive imputed to the victim

The ill motive, which the accused-appellant imputed to KKK, does not inspire belief as it is riddled with loopholes generated by incongruent and flimsy evidence. The prosecution was able to establish that the ₱3 Million deposit in the spouses' bank account was the proceeds of their loan from the Bank of Philippine Islands (BPI). Exhibit J, which is a BPI ML instruction sheet dated October 31, 1996 in the amount of ₱3,149,840.63 is the same amount the accused-appellant claimed to have entrusted to her wife. Although the accused-appellant denied being aware of such loan, he admitted that approximately ₱3 Million was spent for the construction of their house. These pieces of evidence effectively belie the accused appellant's allegation that KKK could not account for the money deposited in the bank.<sup>153</sup>

Anent, KKK's alleged extra-marital affairs, the accused-appellant failed to explain how Bebs could be his wife KKK when the letter-sender greeted Bebs a "happy birthday" on October 28 while KKK's birthday is June 23. The accused-appellant also did not present Bebs herself, being a more competent witness to the existence of the alleged love letters for KKK. He likewise failed, despite promise to do so, to present the original copies of such love letters neither did he substantiate KKK's supposed extra-marital affairs by presenting witnesses who could corroborate his claims. Further, the Court finds it unbelievable that an able man would not have the temerity to confront his wife who has fooled around with 10 men - some of whom he has even met. The accused-appellant's erratic statements on the witness stand are inconsistent with the theory of extra-marital romance making it reasonable to infer that he merely made up those malicious stories as a desperate ploy to extricate himself out of this legal quandary.

At best, the basis of the alleged illicit affairs of KKK were the accused-appellant's unfounded suspicions that hold no evidentiary weight in law and thus incompetent to destroy KKK's credibility



and that of her testimony. In sum, the defense failed to present sufficiently convincing evidence that KKK is a mere vindictive wife who is harassing the accused-appellant with fabricated rape charges.

#### Alibi

It must be stressed that in raising the irrevocable implied consent theory as defense, the accused-appellant has essentially admitted the facts of sexual intercourse embodied in the two criminal informations for rape. This admission is inconsistent with the defense of alibi and any discussion thereon will thus be irrelevant.

At any rate, the courts a quo correctly rejected his alibi.

Alibi is one of the weakest defenses not only because it is inherently frail and unreliable, but also because it is easy to fabricate and difficult to check or rebut. It cannot prevail over the positive identification of the accused by eyewitnesses who had no improper motive to testify falsely.<sup>154</sup>

For the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time of the commission of the crime, but also that it was physically impossible for him to be at the locus delicti or within its immediate vicinity. Physical impossibility refers not only to the geographical distance between the place where the accused was and the place where the crime was committed when the crime transpired, but more importantly, the facility of access between the two places.<sup>155</sup>

Even granting in arguendo that the accused-appellant had indeed attended a fiesta in Dangcagan, Bukidnon or was hauling com with Equia on the dates of commission of the crime, the same will not easily exonerate him. The accused-appellant failed to adduce clear and convincing evidence that it was physically impossible for him to be at his residence in Cagayan de Oro City at the time of the commission of the crime. Dangcagan, Bukidnon can be traversed by about four or five hours from Cagayan de Oro City, and even less by private vehicle which was available to the accused appellant at any time.<sup>156</sup> Thus, it was not physically impossible for him to be at the situs criminis at the dates and times when the two rape incidents were committed.

Between the accused-appellant's alibi and denial, and the positive identification and credible testimony of the victim, and her two daughters, the Court must give weight to the latter, especially in the absence of ill motive on their part to falsely testify against the accused-appellant.

#### Conclusion

All told, the presumption of innocence endowed an accused-appellant was sufficiently overcome by KKK's clear, straightforward, credible, and truthful declaration that on two separate occasions, he succeeded in having sexual intercourse with her, without her consent and against her will. Evidence of overwhelming force and intimidation to consummate rape is extant from KKK's narration as believably corroborated by the testimonies of MMM and OOO and the physical evidence of KKK's torn panties and short pants. Based thereon, the reason and conscience of the Court is morally certain that the accused-appellant is guilty of raping his wife on the nights of October 16 and 17, 1998.

#### Penalties

The Court affirms the penalty of reclusion perpetua, for each count of rape, meted upon the accused-appellant for being in accord with Article 266-A in relation to 266-B of the RPC. Further, he

shall not be eligible for parole pursuant to Section 3 of R.A. No. 9346, which states that "persons convicted of offenses punished with reclusion perpetua, or whose sentences will be reduced to reclusion perpetua, by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended."<sup>157</sup>

The Court sustains the moral damages awarded in the amount of ₱50,000.00. Moral damages are granted to rape victims without need of proof other than the fact of rape under the assumption that the victim suffered moral injuries from the experience she underwent.<sup>158</sup>

The award of civil indemnity is proper; it is mandatory upon the finding that rape took place. Considering that the crime committed is simple rape, there being no qualifying circumstances attendant in its commission, the appropriate amount is ₱50,000.00<sup>159</sup> and not ₱75,000.00 as awarded by the RTC.

To serve as an example for public good and in order to deter a similar form of domestic violence, an award of ₱30,000.00 as exemplary damages is imperative.<sup>160</sup>

The damages awarded shall earn legal interest at the rate of six percent (6%) per annum to be reckoned from the date of finality of this judgment until fully paid.<sup>161</sup>

#### A Final Note

Rape is a crime that evokes global condemnation because it is an abhorrence to a woman's value and dignity as a human being. It respects no time, place, age, physical condition or social status. It can happen anywhere and it can happen to anyone. Even, as shown in the present case, to a wife, inside her time-honored fortress, the family home, committed against her by her husband who vowed to be her refuge from cruelty. The herein pronouncement is an affirmation to wives that our rape laws provide the atonement they seek from their sexually coercive husbands.

Husbands are once again reminded that marriage is not a license to forcibly rape their wives. A husband does not own his wife's body by reason of marriage. By marrying, she does not divest herself of the human right to an exclusive autonomy over her own body and thus, she can lawfully opt to give or withhold her consent to marital coitus. A husband aggrieved by his wife's unremitting refusal to engage in sexual intercourse cannot resort to felonious force or coercion to make her yield. He can seek succor before the Family Courts that can determine whether her refusal constitutes psychological incapacity justifying an annulment of the marriage.

Sexual intimacy is an integral part of marriage because it is the spiritual and biological communion that achieves the marital purpose of procreation. It entails mutual love and self-giving and as such it contemplates only mutual sexual cooperation and never sexual coercion or imposition.

The Court is aware that despite the noble intentions of the herein pronouncement, menacing personalities may use this as a tool to harass innocent husbands. In this regard, let it be stressed that safeguards in the criminal justice system are in place to spot and scrutinize fabricated or false marital rape complaints and any person who institutes untrue and malicious charges will be made answerable under the pertinent provisions of the RPC and/or other laws.

WHEREFORE, all the foregoing considered, the Decision dated July 9, 2008 of the Court of Appeals in CA-G.R. CR-HC No. 00353 is hereby AFFIRMED with MODIFICATIONS. Accused-appellant Edgar Jumawan is found GUILTY beyond reasonable doubt of two (2) counts of RAPE and is sentenced to suffer the penalty of reclusion perpetua for each count, without eligibility for parole. He is further ordered to pay the victim, KKK, the amounts of PS0,000.00 as civil indemnity, ₱50,000.00

as moral damages, and ₱30,000.00 as exemplary damages, for each count of rape. The award of damages shall earn legal interest at the rate of six percent (6%) per annum from the finality of this judgment until fully paid.

SO ORDERED.

**BIENVENIDO L. REYES**  
Associate Justice

WE CONCUR:

**MARIA LOURDES P. A. SERENO**  
Chief Justice  
Chairperson

**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

**LUCAS P. BERSMAN**  
Associate Justice

**MARTIN S. VILLARAMA, JR.**  
Associate Justice

#### C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**MARIA LOURDES P. A. SERENO**  
Chief Justice

#### Footnotes

<sup>1</sup> 26 Am Jur SSS, p. 636.

<sup>2</sup> Pursuant to People v. Mateo, G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 653-658.

<sup>3</sup> Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Edgardo A. Camello and Rodrigo F. Lim, Jr., concurring; rollo, pp. 5-30.

<sup>4</sup> Issued by Judge Anthony E. Santos; records, pp. 760-769.

<sup>5</sup> The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of their immediate family or household members, shall not be disclosed to protect her privacy and fictitious initials shall, instead, be used, in accordance with People v. Cabalquinto (533 Phil. 703 [2006]), and A.M. No. 04-11-09-SC dated September 19, 2006.

<sup>6</sup> Pre-trial Order dated November 16, 1999, records, pp. 71-74.

<sup>7</sup> Id. at 23-24.

<sup>8</sup> Id. at 3-5.

<sup>9</sup> Id. at 2.

<sup>10</sup> Id. at 13.

<sup>11</sup> Id. at 27.

<sup>12</sup> Id. at 44-48.

<sup>13</sup> Id. at 50.

<sup>14</sup> Id. at 49.

<sup>15</sup> Id. at 84-85.

<sup>16</sup> Exhibit "7".

<sup>17</sup> Records, p. 89.

<sup>18</sup> Id. at 86.

<sup>19</sup> Id. at 87.

<sup>20</sup> TSN, May 24, 2000, pp. 93-95.

<sup>21</sup> Id. at 98-99.

<sup>22</sup> Id. at 101; TSN, July 3, 2000, p. 5.

<sup>23</sup> TSN, February 10, 2000, pp. 26-27.

<sup>24</sup> TSN, August 2, 2000, p. 21.

<sup>25</sup> TSN, May 24, 2000, p. 99.

<sup>26</sup> Id.

<sup>27</sup> Id. at 100; TSN, August 2, 2000, p. 21-22.

<sup>28</sup> TSN, February 4, 2000, p. 30.

<sup>29</sup> TSN, August 2, 2000, p. 23.

<sup>30</sup> TSN, May 24, 2000, pp. 95-97.

<sup>31</sup> TSN, July 3, 2000, p. 17; TSN, July 13, 2000, p. 14; KKK's Complaint Affidavit dated February 19, 1999, records, pp. 10-11.

<sup>32</sup> TSN, July 3, 2000, pp. 6-7.

<sup>33</sup> TSN, February 4, 2000, p. 37.

<sup>34</sup> TSN, February 3, 2000, pp. 8-9; TSN, February 4, 2000, pp. 45-47; TSN, August 2, 2000, pp. 5-6.

<sup>35</sup> TSN, February 3, 2000, pp. 9-10; TSN, May 24, 2000, pp. 74-75.

<sup>36</sup> TSN, May 24, 2000, pp. 75-76.

<sup>37</sup> <sup>38</sup> Id. at 76-77.

<sup>38</sup> Id. at 77-78.

<sup>39</sup> Id. at 78-79; Exhibit "A".

<sup>40</sup> TSN, July 13, 2000, p. 11.

<sup>41</sup> Id.

<sup>42</sup> TSN, May 24, 2000, pp. 79-81.

<sup>43</sup> TSN, February 4, 2000, pp. 46-47.

<sup>44</sup> Id. at 49-50.

<sup>45</sup> TSN, August 2, 2000, p. 8.

<sup>46</sup> TSN, February 3, 2000, p. 11

<sup>47</sup> Id. at 12; TSN, May 24, 2000, pp. 81-82.

<sup>48</sup> TSN, February 3, 2000, pp. 11-13; TSN, August 2, 2000, p. 8.

<sup>49</sup> TSN, February 3, 2000, Id.

<sup>50</sup> Id. at 14; TSN, May 24, 2000, pp. 82-83.

<sup>51</sup> TSN, February 4, 2000, pp. 56-59.

<sup>52</sup> TSN, February 3, 2000, pp. 14-15.

<sup>53</sup> Id. at 16; TSN, May 24, 2000, p. 83; TSN, August 2, 2000, pp. 9-10.

<sup>54</sup> TSN, February 3, 2000, pp. 17-19; TSN, May 24, 2000, pp. 84-86; TSN, August 2, 2000, pp. 11-13.

<sup>55</sup> TSN, February 10, 2000, pp. 40-41.

<sup>56</sup> Id. at 44-45.

<sup>57</sup> Exhibit "B".

<sup>58</sup> TSN, February 3, 2000, pp. 19-20; TSN, May 24, 2000, pp. 86-87; TSN, August 2, 2000, pp. 13-14.

<sup>59</sup> TSN, February 3, 2000, pp. 21-22; TSN, May 24, 2000, pp. 87-88; TSN, August 2, 2000, pp. 14-16.

<sup>60</sup> TSN, May 24, 2000, pp. 88-89.

<sup>61</sup> Id. at 89-90.

<sup>62</sup> Id. at 90; TSN, February 3, 2000, pp. 23-24; TSN, August 2, 2000, pp. 16, 18-19.

<sup>63</sup> TSN, October 24, 2000, pp. 4-7.

<sup>64</sup> Id. at 17.

<sup>65</sup> TSN, April 30, 2001, pp. 6-8.

<sup>66</sup> TSN, October 24, 2000, pp. 7, 10-11; Exhibit "I".

<sup>67</sup> Id. at 7.

<sup>68</sup> Id. at 12-13.

<sup>69</sup> Also referred to as Bebie in the other parts of the records.

<sup>70</sup> Id. at 14; Exhibit "3".

[[71] TSN, February 2, 2001, pp. 14-15.

<sup>72</sup> Id. at 16-17.

<sup>73</sup> TSN, October 24, 2000, pp. 19-21; TSN, March 12, 2001, p. 155.

<sup>74</sup> TSN, October 24, 2000, p. 18.

<sup>75</sup> Id. at 18-19; Exhibit "2".

<sup>76</sup> Records, pp. 760-769.

<sup>77</sup> Id. at 769.

<sup>78</sup> Rollo, pp. 5-30.

<sup>79</sup> Id. at 29.

<sup>80</sup> Id. at 35-36; The contents of the Resolution was reiterated in another Resolution dated November 15, 2010, id. at 47-48.

<sup>81</sup> Id. at 37-38.

<sup>82</sup> Id. at 78-93.

<sup>83</sup> Cassandra M. DeLaMothe, *Liberta Revisited: A Call to Repeal the Marital Exemption for All Sex Offenses in New York's Penal Law*, 23 *Fordham Urban Law Journal*, p. 861 (1995). <http://ir.lawnet.fordham.edu/ulj>, last accessed on March 31, 2014.

<sup>84</sup> Maria Pracher, *The Marital Rape Exemption: A Violation of a Woman's Right of Privacy*, 11 *Golden Gate U. L. Rev.*, p. 725 (1981 ). <http://digitalcommons.law.ggu.edu/ggulrev/vol11/iss3/1>, last accessed on March 31, 2014.

<sup>85</sup> *Supra* note 83.

<sup>86</sup> Id.

<sup>87</sup> Id. at 860.

<sup>88</sup> Id. at 860-861, citing Arthur R. Cleveland, *Woman Under the English Law* 71 (Fred B. Rothman 7 Co. 1987) (1896), p. 24.

<sup>89</sup> Id. at 859-860.

<sup>90</sup> Id. at 860, citing I William Blackstone *Commentaries* \*432 and Katherine M. Schelong, *Domestic Violence and the State: Responses to and Rationales for Spousal Battering, Marital Rape and Stalking*, 78 *MARQ. L. REV.* 79, 81 (1994).

<sup>91</sup> Id., citing Schelong, 86. (Other citations omitted)

<sup>92</sup> 1 Hale, *History of Pleas of the Crown*, pp. 628-629 (1736), as cited in *People v. Liberta*, Court of Appeals of New York, 474 N.E. 2D 567 (1984).

<sup>93</sup> *Supra* note 84, at 717. (Citations Omitted)

<sup>94</sup> Julie Allison and Lawrence Wrightsman, *Rape, The Misunderstood Crime*, United States, Sage Publications, Inc., p. 87 ( 1993).

<sup>95</sup> 74 Mass 489, as cited in *People v. Liberta*, *supra* note 92.

<sup>96</sup> See *People v. Liberta*, *supra* note 92.

<sup>97</sup> DeLaMothe, *supra* note 83, at 862, citing N.Y. Penal Law SS 2010 (Consol. 1909), viz:

"A person who penetrates an act of sexual intercourse with a female not his wife, against her will or without her consent. .. [i]s guilty of rape in the first degree and punishable by imprisonment for not more than twenty years.

A person who penetrates an act of sexual intercourse with a female, not his wife, under the age of eighteen years, under circumstances not amounting to rape in the first degree, is guilty of rape in the second degree, and punishable with imprisonment for not more than ten years."

<sup>98</sup> *Id.*, citing the 1922 case of *People v. Meli* (193 N .Y.S. 365 [Sup. Ct. 1922]). John Meli was convicted of rape for aiding and abetting another man in raping his wife. Meli did not commit the rape himself but he was present while the rape was being committed and he actually helped to overcome his wife.

<sup>99</sup> Racquel Kennedy Bergen, Ph.D., *Marital Rape*, Applied Research Forum, National Electronic Network on Violence Against Women, p. 2 (1999). [www.hawaii.edu/hivandaids/Marital Rape.pdf](http://www.hawaii.edu/hivandaids/MaritalRape.pdf), last accessed on April 1, 2014, citing Bidwell, L., & White, P., *The family context of marital rape*. *The Journal of Family Violence*, 1, pp. 277-287 (1986) and Finkelhor, D., & Yllo, K., *License to Rape: Sexual Abuse of Wives*, New York: Holt, Rinehart & Winston (1985).

<sup>100</sup> *People v. Liberta*, *supra* note 92.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> Bergen, *supra* note 99, citing Bergen, R.K., *Wife Rape: Understanding the Response of Survivors and Service Providers*. Thousand Oaks, CA: Sage (1996) and Russell, D.E.H., *Rape in Marriage*, New York, Macmillan Press (1990).

<sup>104</sup> Tenure: November 20, 1985 to March 6, 1986.

<sup>105</sup> Ramon C. Aquino, *The Revised Penal Code, Volume III*, Central Lawbook Supply, Inc. (1988 Ed.), pp. 382-383.

<sup>106</sup> <http://pcw.gov.ph/intemational-commitments/cedaw/state-obligations>, last visited on March 20, 2014; CEDAW came into effect on September 4, 1981, the Philippines has signed it on July 17, 1980 and ratified it on July 19, 1981, the first Association of South East Asian Nation country to do so.

<sup>107</sup> CA Associate Justice Myrna Dimaranan-Vidal, *Women Empowerment*, [http://ca.judiciary.gov.ph/index.php?action=mnuactual\\_contents&ap=j8040&p=y](http://ca.judiciary.gov.ph/index.php?action=mnuactual_contents&ap=j8040&p=y), last accessed on April 1, 2014.

<sup>108</sup> CEDAW, Article 2, Part I.

<sup>109</sup> Also known as The Anti-Rape Law of 1997, the law took effect on October 22, 1997; See *People v. Maceda*, 405 Phil. 698, 721 (2001).

<sup>110</sup> Consideration of the Conference Committee Reports, September 3, 1997.



<sup>111</sup> Bicameral Conference Committee Meeting, Committee on Revision of Laws J/W Committee on Women, March 17, 1997.

<sup>112</sup> Sub-committee on Disadvantaged Women (Committee on Women) JT. Sub-committee on Criminal Laws Committee on Revision of Laws), November 15, 1995.

<sup>113</sup> Committee on Revision of Laws J/W Committee on Women, January 29, 1996.

<sup>114</sup> ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004.

<sup>115</sup> <http://pcw.gov.ph/statistics/201304/statistics-violence-against-filipino-women>, last visited on March 18, 2014.

<sup>116</sup> CA rollo, pp. 150-151.

<sup>117</sup> CEDAW, Article 5, Part I.

<sup>118</sup> UN General Assembly, December 20, 1993. <http://www.un.org/documents/ga/res/48/a48rl04.htm>, last accessed on April 1, 2014.

<sup>119</sup> *Id.*

<sup>120</sup> Universal Declaration of Human Rights, Article I:

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

<sup>121</sup> UN Declaration on the Elimination of Violence Against Women, Article 4:

States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women x x x.

<sup>122</sup> Article 68. - The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support. (Emphasis ours)

<sup>123</sup> See *Tsai v. CA*, 334 Phil. 294, 304 (1997).

<sup>124</sup> *Id.* at 304.

<sup>125</sup> Refusal to have sexual intercourse must be rooted on psychological incapacity which in turn must be established by the requirements of gravity, juridical antecedence and incurability; *Baccay v. Baccay*, G.R. No. 173138, December 1, 2010, 636 SCRA 350, 368-369; See also the Concurring Opinion of Associate Justice Arturo D. Brion in the case stating that: "The failure to consummate the marriage by itself, however, does not constitute as a ground to nullify the marriage. The spouse's refusal to have intimate sexual relations must be due to causes psychological in nature, i.e., the psychological condition of the spouse renders [her] incapable of having intimate sexual relations with the other. x x x." 636 SCRA 350, 375.

<sup>126</sup> 1987 CONSTITUTION, Article III, Section 1.

<sup>127</sup> *City of Manila v. Hon. Laguio, Jr.*, 495 Phil. 289, 326 (2005).

<sup>128</sup> *Supra* note 92.

<sup>129</sup> Beijing Declaration and Platform for Action, The Fourth World Conference on Women, September 15, 1995, paragraph 96.  
<http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>, last accessed on April 3, 2014. According to the Philippine Commission on Women, the Philippines acceded to the commitments set forth in the Beijing Declaration and Platform for Action.

<http://www.pcw.gov.ph/international-commitments>, last accessed on April 3, 2014.

<sup>130</sup> R.A. No. 9710 (The Magna Carta of Women), Section 3:

Principles of Human Rights of Women. - Human rights are universal and inalienable. All people in the world are entitled to them. The universality of human rights is encompassed in the words of Article I of the Universal Declaration of Human Rights, which states that all human beings are free and equal in dignity and rights.  
(Emphasis ours)

<sup>131</sup> *People v. Publico*, G.R. No. 183569, April 13, 2011, 648 SCRA 734, 742.

<sup>132</sup> *People v. Agustin*, G.R. No. 194581, July 2, 2012, 675 SCRA 424, 434.

<sup>133</sup> TSN, May 24, 2000, pp. 75-81.

<sup>134</sup> *Id.* at 87-89.

<sup>135</sup> *Id.* at 89-90.

<sup>136</sup> *Sison v. People*, G.R. No. 187229, February 22, 2012, 666 SCRA 645, 659.

<sup>137</sup> TSN, May 24, 2000, pp. 77-81.

<sup>138</sup> TSN, July 13, 2000, pp. 10-11.

<sup>139</sup> TSN, May 24, 2000, pp. 88-89.

<sup>140</sup> *People v. Estoya*, G.R. No. 200531, December 5, 2012, 687 SCRA 376, 386.

<sup>141</sup> *People v. Dimanawa*, G.R. No. 184600, March 9, 2010, 614 SCRA 770, 778.

<sup>142</sup> *People v. Magtibay*, 435 Phil. 353, 365 (2002).

<sup>143</sup> *v. Baltazar*, 397 Phil. 277, 288 (2000).

<sup>144</sup> *People of the Philippines v. Joey Bacatan*, G.R. No. 203315, September 18, 2013.

<sup>145</sup> *Id.*

<sup>146</sup> 321 Phil. 279 ( 1995).

<sup>147</sup> *Id.* at 318.

<sup>148</sup> *People v. Cias*, G.R. No. 194379, June 1, 2011, 650 SCRA 326, 337.

<sup>149</sup> TSN, February 3, 2000, p. IO; TSN, February 4, 2000, pp. 48-50.

<sup>150</sup> *People v. Satioquia*, 460 Phil. 167, 173 (2003).

<sup>151</sup> TSN, July 3, 2000, pp. 13-14.

<sup>152</sup> See *People v. Cabtalan*, G.R. No. I 75980, February 15, 2012, 666 SCRA 174, 192-193.

<sup>153</sup> TSN, November 21, 2000, pp. 13-14.

<sup>154</sup> *People v. Ogarte*, G.R. No. 182690, May 30, 2011, 649 SCRA 395, 413, citing *People v. Palomar*, 343 Phil. 628, 663-664 (1997).

<sup>155</sup> *People v. Viojela*, G.R. No. 177140, October 17, 2012, 684 SCRA 241, 257-258. 156

<sup>156</sup> TSN, May 11, 2001, p. 171.

<sup>157</sup> *People of the Philippines v. Joey Bacatan*, *supra* note 144.

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*