

RECORD OF THE SENATE

TUESDAY, JULY 23, 1996

OPENING OF THE SESSION

At 4:22 p.m., the President of the Senate, Hon. Neptali A. Gonzales, called the session to order.

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

We shall all rise and be led in prayer by Sen. Edgardo J. Angara.

Everybody rose for the opening prayer.

PRAYER

Senator Angara.

Almighty God,

The way to peace and reconciliation is again the dilemma of our people. We in the Senate have the duty to help untangle this knot that has prevented the provinces in Mindanao from attaining the progress that their citizens deserve.

We pray for guidance so that we can see clearly through the doubt and foreboding that grip both Christians and Muslims.

We pray for enlightenment so that we can come to a judgement that is acceptable to all.

We pray for strength of purpose so that we can stay the course--once a decision is taken.

But above all, we pray for wisdom so that we can contribute calmly and rationally to the discussion of this ancient problem.

Grant us, O Lord, all these and shine the light of the Holy Spirit on all of us.

Amen.

ROLL CALL

The President. The Secretary will please call the roll.

The Secretary, reading:

Senator Heherson T. Alvarez Present

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

The President. With 20 senators present, the Chair declares the existence of a quorum.

THE JOURNAL

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

The President. Are there any objections? [Silence] The Chair hears none; the reading of the Journal of the previous session is dispensed with and the same is hereby approved.

Senator Romulo. Mr. President, before the Secretary will read the Order of Business, may I just state that for today's agenda, we shall continue the discussion on Senate Bill No. 950, the Anti-Rape Bill, as reported out under Committee Report No. 78 which is now under the period of interpellations.

We shall also take up the financial services on the WTO, which is also in the period of interpellations.

The President. The Secretary will now read the Order of Business.

The Secretary.

*Arrived after the roll call

RESUMPTION OF THE SESSION

At 5:12 p.m., the session was resumed.

The President. The session is resumed.

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

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

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

Senator Romulo. We are now in the period of interpellations, Mr. President.

May I ask that we recognize the sponsors of the bill, Senators Shahani and Roco, as well as the distinguished Senator from Iloilo, Sen. Franklin Drilon, who had made reservation to interpellate.

The President. The sponsors of the bill, Senators Roco and Shahani are hereby recognized. The Chair likewise recognizes Senator Drilon for purposes of interpellation.

Senator Drilon. Mr. President, will the good Sponsor yield for a few questions for clarification?

Senator Shahani. I shall be happy, to entertain the questions of our distinguished colleague from Iloilo.

Senator Drilon. Before we proceed, may I know which version will we use for purposes of this debate? There is Committee Report No. 78 in our black folder which apparently is different from another version dated June 3, 1996, also found in the same folder.

Which one do we consider for purposes of interpellation, Mr. President?

Senator Shahani. Mr. President, in accordance with the decision of this Chamber made on June 6, 1996, we are using the version of the June 3, 1996 bill, as amended. This was approved unanimously on the motion of the Majority Leader on June 6, 1996.

Senator Drilon. I thank the distinguished Senator for that clarification, Mr. President.

In Section 2 of Senate Bill No. 950, which deals with the expanded definition of rape, the crime is defined to be committed by a man who shall have penile penetration of the genitalia of a woman under the circumstances described therein.

Mr. President, may I know for the record whether in the absence of the penile penetration into the genitalia, the act will still be considered as a consummated rape?

I am raising this question because in a number of cases decided by the Supreme Court, the actual penetration of the genitalia is not essential for purposes of convicting an accused of a consummated rape. In fact, the decisions of the Supreme Court would indicate that it is enough that there is proof of the entrance of the male organ within the labia of the pudendum, or the lips of the female organ. In other words, penetration is not essential to the commission of rape.

With this definition under Section 2 of Senate Bill No. 950, would it now mean that there must be a proof of an actual penetration?

Senator Shahani. Mr. President, I believe the answer is contained in Section 3 where it is said that the penetration of the genitalia of a woman is not necessary and that the slightest contact of the penis to the genital of a woman, under paragraph (1) of Section 2, or to the mouth or anus of a woman, under paragraph (2) of Section 2, shall constitute the consummation of the crime of rape.

Senator Drilon. Given that clarification, would the good sponsor, at the appropriate period of amendments, agree to reword Section 2 so that there will be no more questions raised when prosecution is made once this bill becomes law?

As we know in criminal proceedings, we need a proof beyond reasonable doubt to convict, and any doubt is resolved in favor of the accused. I am afraid that the insertion of the phrase "penile penetration of the genitalia" will put some doubt on what the elements of the crime of rape are.

If this is the intention of the sponsor anyway, as found in Section 3, that indeed any slightest contact of the penis would constitute a consummated rape, will the good sponsor agree at the appropriate period that we just retain the wording under the present law by just simply using the words "carnal knowledge" since this term has a definite meaning under settled jurisprudence?

Senator Shahani. I think that would be useful, Mr. President. Although the words "carnal knowledge" is really of biblical origin, it has acquired a technical import over the years, and it also has its literary interpretation. But I believe that this

is an important point. It is a new element which is introduced by this bill. I would be happy, and I am sure that upon consultation with Senator Roco, this would be an important amendment to the bill.

Senator Drilon. Thank you, Mr. President.

I notice that the second paragraph of Section 2, particularly line 15 of the version approved by this Body—the insertion of the phrase “penis into the mouth or anus of another person,” which is the original wording in the Committee Report—is now changed to insertion of the “penis into the mouth or anus of a woman.”

I assume this is now the version that we are talking about and this would exclude insertion of the penis in a male. So that in cases of homosexual relationship, that would not be considered as rape.

Senator Shahani. Yes, that is correct, Mr. President. Our colleague has brought up an important point. This Rape Bill is not really gender neutral. It is drafted and prepared mainly for the benefit of women. I am saying this because there was an attempt at an earlier version to have it gender-free. But we felt that this might distort the objective of this bill which is really to protect the personhood of women. After all, the main victims of rape are still women, and we felt that it is important that this objective should be clear in the minds of our citizens.

Senator Drilon. Thank you, Mr. President, for that clarification.

Again, for clarification. In line 17, page 1, on the expanded definition of rape, the crime of rape is also committed by a man “who shall introduce any object or instrument into the genital or anus of a woman under the circumstances stated in paragraph (1) hereof.” I assume this would not include circumstances where a physician would insert an instrument in the anus of a child under the supervision of a parent even if some degree of force is applied where that medical procedure is necessary in case of an ailment. The wording is so general that it can be interpreted that way, but for purposes of record and for future reference, I would like a clarification from the good sponsor.

Senator Shahani. Under those conditions, Mr. President, I do not think the crime of rape can be committed because here, we are talking about the violation of the personhood of the victim and under medical circumstances, even with an element of force, I think we are talking about the welfare of the patient in question.

Senator Drilon. On the point of extinguishment of the criminal offense, Mr. President, is marriage under this proposal

an implied pardon which would free the offender from criminal liability?

Senator Shahani. That is correct, Mr. President. Section 13, which relates to effect of pardon, is quite clear here. The second paragraph states and I quote:

The subsequent marriage between the offender and the offended party shall extinguish the criminal action or the penalty imposed. The extinguishment of the criminal action or the penalty shall not apply to coprincipals, accomplices, and accessories.

I believe this is quite clear, Mr. President.

Senator Drilon. My problem, Mr. President, is, when it comes to accomplices and accessories. Suppose there are accessories and accomplices to the crime of rape and the principal accused subsequently married the victim. Under Section 13 of the proposed law, the criminal offense is extinguished. However, it also states that as far as the accessories and accomplices are concerned, the criminal liability is not extinguished. So we have a situation where we have an accomplice and an accessory being charged but no principal can be found because the criminal liability has been extinguished. How do we reconcile this?

I can understand a situation where there are coprincipals. But if there are no coprincipals and we only have accessories and accomplices and the principal would marry the victim under this provision, the principal's criminal liability is extinguished. But the accessories and the accomplices would continue to be liable.

Senator Shahani. Mr. President, as stated in the first sentence, “the pardon by marriage extends only to the coaccused favored by marriage.”

Senator Drilon. I have no problem with that, Mr. President. My problem is when it gets to the accomplices and the accessories. From the way the proposed law is worded, under the second paragraph of Section 13 on page 6, it is expressly stated “that the extinguishment of the criminal action or penalty shall not apply to coprincipals, accomplices and accessories.”

Where there is a coprincipal, this is still a valid provision. But where there is no coprincipal and there is only one principal and he marries the victim, the principal's liability is extinguished, but we continue to impose the penalty on the accomplices and the accessories. I do not think that is an accepted principle in criminal law, Mr. President.

Senator Shahani. Mr. President, it is my understanding

that accomplices and accessories would still be liable for the crime committed, that is why we placed these words here. But I am open to any refinement of this provision at a later stage.

Senator Drilon. Thank you, Mr. President. With those answers and commitment that we can still propose amendments at the appropriate time, I have no further questions.

I thank the good sponsor for accommodating my questions.

Senator Shahani. Thank you, Mr. President.

Senator Romulo. Mr. President, may I ask that the following Senators be recognized to interpellate: Sen. Juan Ponce Enrile and thereafter Sen. Ernesto Herrera.

The President. Senator Enrile is recognized.

Senator Enrile. Thank you, Mr. President. Will the distinguished lady sponsor care to answer some clarifying questions?

Senator Shahani. I would be very pleased to entertain questions from our distinguished colleague from Cagayan.

Senator Enrile. Mr. President, there are four ways, in fact five ways, by which a rape case could be made out under this proposed statute.

Paragraph 1 defines the first:

When a man who shall have penile penetration of the genitalia of a woman under any of the following circumstances: through force, threat or intimidation; through means of abuse of authority or relationship; when a woman is deprived of reason or is otherwise unconscious; when the woman is below twelve (12) years of age even though neither of the circumstances mentioned above is present.

Now, I would like to get a clarification of paragraph (c), Mr. President. Suppose a girl who is 25 years old is actually devoid of capacity to normally think—she is not deprived of reason but imbecile, she is devoid of reason—would having sexual intercourse with her without any force, threat or intimidation be considered rape?

Because she is not deprived of reason. When we say that a person is deprived of reason, that means we use a certain agent to deprive her of reason, like drugging her or putting her to sleep or something else. But here, there is a natural condition of being devoid of reason.

Senator Shahani. Mr. President, I think the question there is the meaning of the words “deprived” and “devoid” of reason. But “deprived” could also mean “devoid.” I mean, she can be deprived at birth of reason. And when one becomes devoid of reason, anyway, there is an external agent which has caused that absence of reason.

Senator Enrile. I would like to be sure, Mr. President, that these two terms are coincident with one another to be able to cover the case of an imbecile. Where there is no force or intimidation needed to have a sexual intercourse with her, simply because she does not know, so an intercourse happened. There was no prior act on the part of the man to deprive her of reason. She was not unconscious. She was not 12 years old. There was no force, no threat, no intimidation. It is simply that at birth she was already devoid of reason. The man did not use any stealth or deliberate act to have an intercourse with her. It just happened that, well, she could not reason, because she is devoid of reason.

Senator Shahani. It means, Mr. President, that that person was not in any position to have any sexual intercourse. There have been cases where a woman is feebleminded. Maybe that is what devoid of reason means. If she is attacked sexually or if her situation is taken advantage of by a man, that would constitute rape. There have been rape cases decided to that effect.

Senator Enrile. Mr. President, an astute criminal lawyer, if the wording will not be changed, would be able to defend a person. Every doubt in a criminal case must be resolved in favor of the accused. That is the greatest defender of a criminal actor—“Mr. Reasonable Doubt.”

Senator Shahani. Mr. President, I think we are here arguing on the meaning of the word “deprived” and how it is different from the word “devoid.”

Senator Enrile. Would it be acceptable to the sponsor to use the word “deprived” or “devoid” of reason?

Senator Shahani. Yes, if that makes it clearer that mental abnormality which could be genetic, for instance, enables a man to take advantage of the victim. I believe that would be a useful amendment to the text.

Senator Roco. Mr. President.

The President. What is the pleasure of Senator Roco?

Senator Roco. With the permission of my two distinguished colleagues.

Maybe, Mr. President, if I could suggest the original definition of rape under the Penal Code in subparagraph (d), where it speaks of "when the woman is below twelve (12) years of age or demented"—there was a term "or demented"—to cover the possibility of the imbecile or people who have no mental capacity. Maybe by retaining the original term "or demented" under line 11, that may cover the problem of our distinguished friend from Cagayan.

Senator Enrile. *Non compos mentis.*

Senator Roco. Yes, *non compos mentis* or similar words that give the definition. When a woman is below 12, it is statutory rape, and when one has sexual intercourse with a woman who is demented or does not have full possession of her mental faculties, then it will fall as one of the alternative circumstances.

Senator Enrile. Thank you, Mr. President.

Senator Roco. Thank you, Mr. President.

Senator Enrile. Mr. President, may I proceed. A husband can commit rape against the wife under this proposed law. The first manner by which he could commit rape against the wife is if he has carnal knowledge with the wife against her will and under scandalous circumstances.

Now, if the husband happened to have carnal knowledge with the wife inside their bedroom, even if it was against the will of the wife, there would be no rape. Am I correct on this, Mr. President? Because the two elements must coincide, meaning the wife must not have sexual intercourse with the husband and that the act is done under scandalous circumstances.

Senator Shahani. Mr. President, the conjunction "and" is there and it is the combination of both elements

Senator Enrile. So, the two elements must coincide, Mr. President?

Senator Shahani. Yes, Mr. President.

Senator Enrile. Now, my further question is: What is the extent of the notoriety of the act of the husband in having carnal knowledge with the wife to be characterized as scandalous circumstance? What level of public exposure or notoriety is needed to meet this standard, it being under scandalous circumstance?

Senator Shahani. Mr. President, if the privacy of the act is violated, if the intimacy of the relationship is destroyed so that

the sexual act is forcibly performed before others, that is what this paragraph refers to.

Senator Enrile. If the husband and the wife happened to be on a beach, and the husband had carnal knowledge with the wife openly, assuming that he is that kind of a man of such perversion as to exhibit it to the public, but the wife did not resist, there will be no rape. Am I correct on this, Mr. President?

Senator Shahani. I would say it would still violate the privacy and the intimacy of the act.

Senator Enrile. Yes. But, nevertheless, the wife consented. So the two elements, against her will and under scandalous circumstances, must be both present to make the husband liable or to characterize the carnal knowledge of the husband with his wife as rape.

Senator Shahani. That is the way I would interpret it, Mr. President. But I might ask Senator Roco, who feels strongly about this issue, and I believe he could add his own insights into the matter.

Senator Roco. Mr. President, with the consent of the distinguished sponsor, in the case of marital rape covered by lines 22, 23 and 24, if we are so minded, it could really end with line 23, "will not negate the commission of the offense," and not qualify. That is one solution.

Here, it is not a definition of a crime. In fact, when one does any of the above acts to his wife, like beating her up to have sexual gratification, then it is classified already as rape. All it says is that one cannot use his being a husband as a full defense. That is the meaning sought to be imparted.

Senator Enrile. The reason I am testing, Mr. President, the meaning of these terms is that criminal laws are strictly interpreted against the government and liberally in favor of the accused.

If these elements are written in the way they are written, then I assume that the fact that the wife is forced to submit to the husband inside the privacy of their homes or bedroom or in a motel or in a hotel would not spell out a rape if the element of scandalous circumstance is absent, because the two must coincide.

Senator Roco. In fact, Mr. President, I suspect that there is really a typographical error here. In fact, I was checking the original draft, "if carnal knowledge was accomplished against the will of the wife or"—we will notice that all the subsequent provisos are connected by the "either/or" prepositions—"under scandalous circumstances or when the husband is afflicted with

sexually transmitted disease, or when the husband has abandoned the wife."

By way of example of the enumeration in the particular case of the scandalous circumstances, it was the case reported in Tondo where, towards midnight, when the husband, with his drinking buddies, were sufficiently intoxicated, the husband called the wife and said, "Come on, honey, we will display what we can really do."

The wife, of course, later on complained. Under those circumstances, it would be rape. The fact that it was the husband who induced the wife to display herself does not constitute a defense. That is the theory of those provisions.

If we can change the conjunction "and" to "or," then we have the different examples where marital rape can occur only by way of enumeration and not by way of defining a crime. Because the crime is already defined under the previous sections.

Senator Enrile. But then again, Mr. President, I am raising this point because, as we know, under existing law, rape is a private crime. Now, we are making it as a crime against persons. Therefore, the State, the people of the Philippines, can institute a criminal action against the husband who may have carnal knowledge with his wife in a park, even if the wife should consent, because we are changing the parameters of this crime. The wife is not the complainant anymore; it is now the State. We have to clarify this into the *Record*.

Senator Roco. That is correct. In fact, it is very good, Mr. President, that we are going to the intentions so that it is precisely clarified.

It is correct to state, that with the reclassification, the wife therefore need not be the complainant because the State may come in to avoid precisely the difficulty of the rape victim also being the prosecutor, the rape victim being dragged into the embarrassment of repeating her experience and trying to prosecute the husband.

Senator Enrile. But why do we consider this situation rape when there is consent on the part of the wife? For all we know, it was the wife who induced the husband to have carnal knowledge with her in a public park because the wife is an exhibitionist. Now we are going to penalize the husband because of his obedience to the desire of the wife and because of his love for the wife, and it is the People of the Philippines that will now charge him—*People of the Philippines vs. Polano*.

Senator Roco. I think line 24, speaks of the carnal

knowledge which was accomplished against the will of the wife. It is against the will of the wife.

Senator Enrile. No. But this is not against the will. If it is an "OR". "Against the will of the wife," there is no problem about that. But if we change the "and" into "OR under scandalous circumstances," having carnal knowledge with the woman in a public park is surely a sexual intercourse under scandalous circumstances. But as I am saying, in a situation where the wife or the woman for that matter consents, we do not penalize it under paragraph 1. If a 25-year-old taxi dancer goes to a public park and will have a carnal knowledge with his boyfriend publicly, we do not consider that as a rape, but we would consider it as a rape if the couple is married.

Senator Roco. The proviso in line 22, page 1, all the way to line 5 of page 2, Mr. President, should not be read outside the definition of the rape as enumerated in Section 2: subsections 1 to 4.

Senator Enrile. All right, Mr. President, just for the sake of clarity. A, a girl of 25 years, dates her boyfriend B, and they went to Luneta. At night, one evening, with the moon shining brightly above, they undressed and had sexual intercourse before many people around them. Would there be rape?

There is none of the elements—from A, B, C, or D.

Senator Roco. I guess under the definition, it will not be rape because it does not fall under the definition of rape as having carnal knowledge or penetration.

Senator Enrile. If A and B are newly married and they want to spend their first night at the Luneta Park, and they did it there under the same circumstance in the presence of a large crowd, would there be rape?

Senator Roco. Again if the wife consents, in my view, there is none.

Senator Enrile. But it is under scandalous circumstance.

Senator Roco. Maybe that one should be clarified.

Senator Enrile. I hope I am not misunderstood. I am just raising these points so that we can craft a law that will cover all possible situations without causing any prejudice to anyone. That is one, Mr. President.

In case the husband, at the time of the commission of the act—carnal knowledge—is afflicted with sexually transmissi-

ble diseases, including HIV, would this spell rape even with the consent of the wife?

If the husband is about to die, and the wife is a loving wife and does not care whether she contracts the disease or not and had a sexual intercourse with the husband who is dying of AIDS, are we going to send this dying man to jail for rape?

Senator Roco. Again, Mr. President, the definition of "rape" in Section 2, paragraphs (1), (2), (3), and (4) is not in that provision—the definition of "rape." The fact that the man is the husband does not constitute a defense, especially under certain circumstances.

For instance, the wife will resist because she does not want to be inflicted with AIDS. But if she consents, then there is no rape because there is, in fact, no need for a defense because there is an agreement. All it says basically is that the right to consortium of a husband has limits; that when the husband is afflicted with a sexually transmissible disease, the wife can, in fact, say no, because that is to save her own life. If she says yes, then there is no rape.

Senator Enrile. In other words, all of these assume the presence of some degree of coercion.

Senator Roco. All of these assume that the acts as enumerated in the definition of rape under Section 2, paragraphs (1), (2), (3), and (4), occur.

In other words, when the circumstances under paragraphs (1), (2), (3) and (4) occur, the man cannot say, "But I am the husband, so I beat her up so I can have sex with her."

If this, in fact, becomes a statute, then that defense will not be considered as a legal proposition by the court.

So we are not redefining rape in the provision in line 22. We are merely saying that being a husband does not constitute a defense, does not constitute a license to beat up his wife to have sex, to drag her into a comatose situation, to insert objects into the genitalia of the wife. That is not part of the right of the husband.

Senator Enrile. What I am raising is, I would imagine that the moment force, threat, intimidation, or if the wife is deprived of reason or made unconscious, it would be enough to bring out rape even if the person raped is the wife of the husband. But unfortunately—and I am not criticizing the way this bill is drafted—there are added conditions.

For instance, I know that this paragraph beginning with line

22 downwards assumes the presence of the element of coercion as spelled out in paragraph 1. But then it says, "...if carnal knowledge was accomplished against the will of the wife under scandalous circumstances or when the husband at the time of the commission of the act, is afflicted with Human Immunodeficiency Virus (HIV) or any sexually transmissible diseases..." which gives me the impression and the interpretation that even if the husband should threaten the wife, there is no rape for as long as he is not suffering from any sexually transmissible disease. The force and the presence of the reason for denial of a sexual intercourse in spite of the force, like HIV or any sexually transmissible diseases, would justify the wife from resisting the sexual intercourse. Absence of this condition would not make the husband liable for rape.

Senator Roco. Mr. President, I think that is a valid observation and that is why originally, I mentioned that maybe we should end the provision on line 23 by just resolving the legal issue of the relationship between the husband and wife. If we will end with the provision "will not negate the commission of the offense" without any further qualifying phrases, then it might clarify the intent of the provision.

Senator Enrile. I brought out these points, Mr. President, in order to enable us to think about this and to recast this particular provision.

Senator Shahani. I might add that this, of course, is an important addition to the bill itself. The issue of marital rape is a new element. I believe that this debate has shown that we have to refine the problem.

But the reason why we felt this has to be brought in is the fact that because a woman is married to the husband, it becomes difficult for her to claim that she is a victim of rape. Yet, it is true that there are many wives who are indeed victims of their husbands.

Senator Enrile. Maybe we can make these elements as aggravating circumstances in order to aid the wife in asserting that she has been raped.

Senator Roco. Mr. President, maybe we can consider alternatives to clarify the legal issue. One of the problems of the wife is being married to each other, and under the marriage vows, the husband and the wife have a right to the body of each other. When the husband is in a foul mood and beats up the wife, that is not considered rape today. It may be abuse of conjugal rights but it is not considered rape.

The effort of the bill is to precisely remove that legal issue in a rape case where the wife is the one who complains. I mean

whatever method may clarify this, Mr. President. I am sure at the appropriate moment we can achieve the modifications to clarify and remove that legal issue from a rape case where it is the married woman complaining against her own husband.

Thank you, Mr. President.

Senator Enrile. Now, going to Section 3, Mr. President. It states: "The slightest contact of the penis to the genital of a woman...or to the mouth or anus of a woman shall consummate the crime of rape."

Mr. President, if the male organ touches only the pubic hair of the woman, would that already mean rape?

Senator Shahani. Mr. President, under this law, yes. But again, Sections 2 and 3 will have to be taken together. In other words, there will have to be threat, intimidation or force.

Senator Enrile. Suppose, Mr. President, the woman was undressed by the man forcibly and he put his entire body on top of the body of the woman. The touching was not only confined to a part of the body. The body of the man itself was on top of the body of the woman. Would there be rape in this case? If so, where do we draw the line between attempted rape and consummated rape?

Senator Shahani. Mr. President, we felt it was important to include Section 3 because in rape prosecution, it is not necessary to prove full penetration by the penis into the vagina of the woman. For the consummation of a rape crime, it is enough that the labia of the woman was penetrated or touched.

Senator Enrile. Precisely, Mr. President, that means that we will no longer consider the three stages of execution of this kind of rape—attempted, frustrated and consummated. So every case of touching would now be rape.

My next question is, where do we draw the line between acts of lasciviousness and rape?

Senator Shahani. Mr. President, I think the acts of lasciviousness are still different from the contact with the labia of the woman.

Senator Enrile. Suppose, Mr. President, the man did not undress the woman. She had her underthings and the man just held the organ of the woman. Would a rape case be proper in this particular instance?

Senator Shahani. Mr. President, Article 336 of the Revised Penal Code refers to the acts of lasciviousness. This is where we

make the distinction between acts of lasciviousness and rape. The elements of the acts of lasciviousness are that the offender commits any act of lasciviousness or lewdness. This is done under the following circumstances: when there is force or intimidation; when the offended party is deprived of reason; or when the offended party is under 12 years of age. In other words, there is no contact between the genitalia of the woman and of the man or the other objects which he may use to make contact with the genitalia or the anus of the woman.

Senator Enrile. Precisely, Mr. President, the woman is undressed. Let us take the case where the woman was deprived of her underthings. She is naked and the man wanted to have a sexual intercourse with her. But in the course of the struggle, only the thigh of the man touched the genitalia of the woman. Would that now constitute rape?

Senator Shahani. I believe that would be an act of lasciviousness.

Senator Enrile. But a part of the body has touched the organ of the woman.

Senator Shahani. Did I hear the distinguished gentleman correctly? Did he say it was the necktie?

Senator Enrile. No, Mr. President. It is the thigh.

Senator Shahani. I am sorry. I thought the distinguished gentleman said "necktie."

Senator Enrile. The thigh of the woman.

Senator Shahani. Of course, Mr. President, it says here "the slightest contact." It is quite clear here in the second paragraph. It says: "The slightest contact of any part of the body of a man other than the sexual organ or any object or instrument, or any part of the animal used by the offender with the genital or anus of a woman under paragraphs three (3) and four (4) respectively of Section 2 hereof shall consummate the crime of rape."

Senator Enrile. Would this not constitute rather a very strict concept of rape, Mr. President? Everything else is a consummated rape under this definition. There is no attempted rape anymore. Just all consummated.

Senator Shahani. Mr. President, under this proposed special law, rape may only either be consummated or attempted.

Senator Enrile. How is the attempt to be done, Mr. President?

Senator Shahani. Attempted rape, Mr. President, would mean acts which would involve forcing the woman to lie with the man. The Gentleman has mentioned some of these acts like undressing her forcibly, or trying to push her down, but there is no contact.

Senator Enrile. There is no contact. So that would be considered attempted rape.

Senator Shahani. That is correct, Mr. President.

Senator Enrile. We do not have to prove anymore that the purpose of the effort to put her down is really to have carnal knowledge with the woman.

Suppose a man of 70 years forced down a woman of 80 without any indication that the purpose of the forcing down is to have carnal knowledge with the woman of 80.

Senator Roco. Mr. President.

The President. With the permission of the lady senator, Senator Roco is recognized.

Senator Roco. Yes, with the permission of the distinguished sponsor and our distinguished colleague, Mr. President, may I call attention to a technical matter as regards the bill.

We will notice that the bill already prescribes a special law as regards rape. It, therefore, becomes a statute and it pulls out of the Penal Code the felony defined as rape. The moment it comes out of the Penal Code and it is no longer a felony, the three stages of attempted, frustrated and consummated, no longer apply because now it becomes *mala prohibita* and that is the intent of the lady sponsor.

Even internally among the authors in the committee, there are some differences, but it is very important to appreciate this, Mr. President. When we make it *mala prohibita*, the distinction between attempted, consummated or frustrated becomes immaterial. The criminal intent, the mind being criminal, which is required in the felony, no longer applies in this version where we now prescribe a special law.

But if, for instance, we cannot achieve consensus in that direction by putting it back as a felony, then all the questions on attempted, frustrated or consummated, will be settled under the normal rules of the Penal Code.

So, I thought I would just call attention to it, because not all of us may be familiar with the technicality that the change in the title of the reported bill will effect.

Senator Enrile. In other words, the gentleman is removing this criminal act from the concept of *actus non facit reum, nisi mens sit rea*, am I correct?

Senator Roco. Even "Atty. No Case" will agree, Mr. President. If we are removing it from the ambit of the Penal Code, it no longer is a felony; it becomes just an ordinary crime. It is a statutory crime and therefore *mala prohibita*.

Senator Enrile. Intent is no longer necessary.

Senator Roco. Intent as required by the Revised Penal Code is no longer necessary unless we put it as part of the definition. Since there are *mala prohibita*, and because the statute itself requires intent, then intent becomes still an element of the crime.

Senator Enrile. I just want to be clear, that this is the purpose of the statute, Mr. President. I have always understood my criminal law to mean that there must be a *mens sit rea* as the Latin term said, *actus non facit reum, nisi mens sit rea*—when you commit a crime, there must be an intent. Because under this definition, even a lunatic would now be liable for rape.

Senator Shahani. Mr. President, I think it is from the very nature of the crime that we are proposing that this be removed from the Revised Penal Code and made into a special law. This is because the consequences of the crime are enormous, and the commission of the crime itself already has a serious effect on society.

Senator Enrile. A person, a man, or an adult, Mr. President, who thinks like a child, but nonetheless acts under a lustful instinct would be liable for rape if he commits any of the acts mentioned under this measure if it becomes a law. So, that person cannot raise the defense of insanity or lack of reason as a defense.

Senator Shahani. Mr. President, that is one element in this issue. But rape has become very common and very hard to prosecute. Rape victims suffer in silence and in agony. It is very hard to prove the criminal intent not only by the very nature of rape but by the conditions which it has created. We felt that it was important to make this into a special law.

Senator Enrile. Is a person under the influence of drugs or heavy intoxication and almost deprived of reason, who commits the acts mentioned in this statute liable for rape?

Senator Shahani. Yes, Mr. President.

Senator Enrile. Now, Mr. President, if this is a crime

against persons, why is it that the complaint must be filed by the offended party and not by the state prosecutors?

Senator Shahani. Mr. President, in the other sections of this bill, we have also expanded the personalities who can file charges of rape. I believe this can be found in Section 5, entitled *Who May File A Complaint*. It states that the complaint for rape may be filed by any of the following individuals, and this is where the bill goes beyond the Revised Penal Code:

- (a) the offended party;
- (b) her parents and legal guardian;
- (c) her grandparents or collateral relatives;
- (d) the officer or social worker of the Department of Social Welfare and Development, or of a duly licensed child-caring institution, orphanage, home for the aged, mental hospital or other similar institutions under whose care or custody the offended party is committed; and
- (e) concerned, responsible resident of the barangay where the crime was committed but only if any of the persons mentioned in the four preceding paragraphs have expressly given their consent to the filing thereof.

So we go beyond, Mr. President.

Senator Enrile. Why not the fiscal? Why do in murder cases, robbery cases, homicide cases or in any kind of crimes against persons, it is the "People of the Philippines" who file the complaint?

Senator Shahani. Precisely, Mr. President, rape cases are not reported by the fiscal. We have this famous rape case now of Karen Bertido in Davao. She claims she was raped, but even the fiscal will not file charges.

Senator Enrile. Because it is a private crime under the present statute. But if it becomes a crime against a person, the inquest will be done by the fiscal; the complaint will be done by the fiscal; and the prosecution will be done by the fiscal. But if it is a private crime, as it is, a private prosecutor can handle it for the private victim.

Senator Shahani. Precisely, Mr. President. Victims of rape are often inhibited from coming out in the open to relate the details of the crime which has been committed against the victim.

Senator Enrile. I agree, Mr. President. Precisely, if they

are inhibited, then there should be a compulsion to file the complaint by the state itself through its agencies without waiting for the private parties, like the offended party, the parents or legal guardian of the offended party, or grandparents, collateral relatives, officers or social workers, for the crime to be brought before the bar of our criminal justice system. It should be a function of the state *motu proprio*.

That is what I am raising now, Mr. President. While I agree that under Section 4, it should be considered a crime against persons, Section 5 makes it almost a private crime.

Senator Shahani. Mr. President, I think that is a good addition. I believe we can add something here about the law enforcement agencies or the criminal justice system of the State. But the thrust of Section 5 is to really help the victim. And here, we have identified the Department of Social Welfare and Development which by now, because of its work with the Women Crisis Center and rape victims, would be in a better position to do so.

If there has been an omission of the usual law enforcement officers, it is really because what has been happening is that, there is not much interest, concern or understanding on the part of the criminal justice system of the reporting by rape victims. Maybe this is because there are not enough women who would be sympathetic to the plight of rape victims who are employed as law enforcers or prosecutors in our government.

Senator Enrile. I will stop my interpellation at this point to give the others a chance. I would like to reserve the right to ask further questions in due course.

Senator Shahani. Before our distinguished colleague from Cagayan goes back to his seat, again I just would like to bring to his attention Section 6 of the bill which refers to the role of the fiscals and other law enforcers of the State, Mr. President.

Senator Romulo. Mr. President.

The President. The Majority leader is recognized.

SUSPENSION OF CONSIDERATION OF S. NO. 950

Senator Romulo. Mr. President, we shall continue the interpellation in tomorrow's afternoon session. May I move that we suspend consideration of Senate Bill No. 950.

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