COMMENT:

THE SWEETHEART DEFENSE IN RAPE CASES: COMMENTS ON *PEOPLE V. RAMOS* AND *PEOPLE V. OGA*

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INTRODUCTION

The sweetheart defense is a positive defense in a rape case wherein the accused argues that he could not have raped the victim because he and she were sweethearts. By operating on the contentious presumption that sex between sweethearts is generally consensual, the sweetheart defense pushes the prosecution to prove that the sex was non-consensual. Thus, the defense subtly shifts the question from, "How did the accused force himself upon the victim?" to "Did the victim resist the advances the accused?" The problem with this shift is that if a court focuses upon the second rather than the first question then it is forced to measure the willingness or unwillingness of the victim. The problem is that this measuring of the will does not take place in an un-gendered world. As Catherine MacKinnon explains, the problem of rape in marriages (and sweetheart relationships) is due in large part to the clash between male and female rationalities:

> Men often say that it is less awful for a woman to be raped by someone she is close to.... Women often feel as or more traumatized from being raped by someone known or trusted, someone with whom at least an illusion of mutuality has been shared, than by some stranger. *In whose interest is it to believe that it is not so bad to be raped by someone who has fucked you before as by someone who has not? ...Apparently someone besides feminists finds sexual victimization and sexual intimacy not all that contradictory under current conditions. Sometimes it seems as though women and men live in different cultures.*[1] (emphasis supplied)

Thus, MacKinnon suggests that because the question of consensual sex is asked from a man's perspective, victimization is interpreted as intimacy and the raped woman becomes the consenting partner.

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[1] CATHARINE A. MACKINNON, TOWARD A FEMINIST THEORY OF STATE 177 (1989) (citations omitted).

The contention of this paper is that the conflict between male and female perspectives of rape is patently evident in the manner in which the Philippine Supreme Court has entertained the sweetheart defense. In particular this paper looks at the two recent cases of *People v. Ramos*[2] and *People v. Oga*.[3] This paper will try to show that the manner in which both cases were decided, reveals the Court's rationality to be very "male biased."

The paper is divided into three parts. Part I is a quick survey of the manner in which consent or non-consent to sex has been generally appreciated by the Supreme Court in cases decided from January 2004 to March 2006. Part II retraces the judicial history of the sweetheart defense. Part III examines two recent decisions of the Court where the sweetheart defense was appreciated.

I. APPRECIATING CONSENT OR NON-CONSENT IN RAPE JURISPRUDENCE FROM JANUARY 2004 TO MARCH 2006

A first look at the Supreme Court's decisions in rape cases decided between January 2004 and March 2006 reveals a Court that liberally construes non-consent in favor of the victim. This is most evident in the repeated pronouncement that there is no formula for non-consent to sex, i.e. non-consent can be expressed in variety of ways. One of the most recent formulations of this rule is provided by the case of *People v. Suarez*:[4]

> It must be stressed that people may react differently to the same set of circumstances. There is no standard reaction of a victim in a rape incident. ...[N]ot every victim of rape can be expected to act with reason or in conformity with the usual expectations of everyone. The workings of a human mind placed under emotional stress are unpredictable; people react differently. Some may shout, some may faint, while others may be shocked into insensibility.[5]

This doctrine is well entrenched. It was reiterated, in one form or another, in at least forty of the 108 cases decided by the Court during the January 2004 to March 2006 period.[6]

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[2] G.R. Nos. 155292-93, February 13, 2004.

[3] G.R. No. 128363, May 27, 2004.

[4] G.R. Nos. 153573-76, April 15, 2005.

[5] *Ibid.* (citations omitted).

[6] These cases are People v. de la Torre, G.R. Nos. 121213 and 121216-23, January 13, 2004; People v. Cea, G.R. Nos. 146462-63, January 14, 2004; People v. Lou, G.R. No. 146803, January 14, 2004; People v. Torees; G.R. No. 134766, January 16, 2004; People v. Limos, G.R. Nos. 122114-17, January 20, 2004; People v. Obrique, G.R. No. 146859, January 20, 2004; People v. Guambor, G.R. No. 152183, January 22, 2004; People v. Balatazo, G.R. No. 118027, January 29, 2004; People v. Blancaflor, G.R. No. 130586, January 29, 2004; People v. Valdez, G.R. Nos. 133194-95 & 141539. January 29, 2004; People v. Manambay, G.R. No. 130684, February 5, 2004; People v. Luceriano, G.R. No. 145223, February 11, 2004; People v. Gusmo, G.R. No. 144974, February 13, 2004; People v. Dimacuha, G.R. Nos. 152592-93. February 13, 2004; People v. Muros, G.R. No. 142511, February 16, 2004; People v. Pachieco, G.R. No. 142887, March 2, 2004; People v. Malones, G.R. Nos. 124388-90, March 11, 2004; People v. Santos, G.R. Nos. 137828-33, March 23, 2004; People v. Galido, G.R. Nos. 148689-92, March 30, 2004; People v. Islabra, G.R. Nos. 152586-87, March 30, 2004; People v. Gabelino, G.R. Nos. 132127-29, March 31, 2004; People v. Capareda, G.R. No. 128363, May 27, 2004; People v. Limio, G.R. Nos. 148804-06, May 27, 2004; People v.

Despite this liberal interpretation in the rape victim's favor, the Court can still be criticized for even entertaining the problem of consent. The law on rape[7] does not require that the prosecution prove that sex be non-consensual but only that the accused had sex with the victim through "force, threat or intimidation." Thus, the consent question of consent is an utter superfluity in the crime of rape.

To this, however, the following questions may be raised: Are not "force, threat or intimidation" and non-consent simply two sides of the same coin? By proving the non-consent of the victim, does not one prove that the accused has used "force, threat[s] or intimidation" and vice-versa? For pragmatic and theoretical reasons, it is the contention of this paper that these questions must be answered in the negative. First, pragmatically, the tasks of proving non-consent and "force, threat or intimidation" are not identical. To prove non-consent, it is the victim who becomes the object of scrutiny and it is her inner disposition that is examined, i.e. willingness or unwillingness to have sex with the accused. On the other hand, to prove "force, threat and intimidation," it is the accused who is scrutinized and his external acts or moral influence over the victim that is studied. If the question of consent is brought into the picture, therefore, it is not

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Rapisora, G.R. No. 147855, May 28, 2004; People v. Agsaoay, G.R. Nos. 132125-26, June 3, 2004; People v. Bautista, G.R. No. 140278, June 3, 2004; People v. Boromeo, G.R. No. 150501, June 3, 2004; People v. Antonio, G.R. No. 157269, June 3, 2004; People v. Clores, Jr., G.R. No. 130488, June 8, 2004; People v. Espinosa, G.R. No. 138742, June 15, 2004; People v. Mabonga, G.R. No. 134773, June 29, 2004; People v. Manits, G.R. Nos. 150613-14, June 29, 2004; People v. Macapagal, G.R. No. 155335, July 14, 2005; People v. Almendral, G.R. No. 126025, July 6, 2004; People v. Dimaano, G.R. No. 168168, September 14, 2005; People v. Alberio, G.R. No. 152584, July 6, 2004; People v. Tonyacao, G.R. Nos. 134531-32, July 7, 2004; People v. Balisno, G.R. No. 136085, July 7, 2004; People v. Orillosa, G.R. Nos. 148716-18, July 7, 2004; People v. Orlando Sonido, G.R. No. 148815, July 7, 2004; People v. Cabalse, G.R. No. 146274, August 17, 2004. Of all these cases, it is People v. Capareda, *supra*, that offers the most comprehensive discussion on the matter. Quoted at length, the Court explained:

> We have also held that intimidation must be viewed in the light of the perception of the victim at the time of the commission of the crime, not by any hard and fast rule. The test is whether the threat or intimidation produces fear in the mind of a reasonable person — that if one resists or does not yield to the desires of the accused, the threat would be carried out....
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> ...We have repeatedly ruled that different people react differently to the same situation, and not every victim of a crime can be expected to act reasonably and conformably to the expectations of everyone.... There is no standard form of human behavioral response when one is confronted with a frightful experience. The victim's mien, rather than composure, could mean resignation, considering her continuing suffering, or apoplexy and numbness as aftermaths of her ordeal.
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> ...This Court has ruled that it is not proper to judge the actions of children who have undergone traumatic experiences by the norms of behavior expected under the circumstances from mature persons. The range of emotion shown by rape victims is yet to be captured even by calculus. It is, thus, unrealistic to expect uniform reactions from rape victims. The workings of the human mind, placed under a great deal of emotional and psychological stress (such as during rape), are unpredictable, and different people react differently....
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> ...Thus, her delay in reporting the rape ought not to be taken against her, nor used to weaken her credibility. The Court takes judicial notice of a young woman's inbred modesty and shyness and her antipathy in publicly airing acts which blemish her honor and virtue. Rape stigmatizes the victim, not the perpetrator. Rape is a harrowing experience and the shock concomitant to it may linger for a while. Oftentimes, victims would rather bear the ignominy and the pain in private than reveal their shame to the world or risk the rapist's making good the threat to do them harm. (citations omitted)

[7] REV. PENAL CODE art. 266-A.

enough for the prosecution to prove that the victim raped the accused for it must also be proved that the victim did not consent to the rape.

This brings us to the theoretical basis for dismissing the protests. If the Court suggests that non-consent must be proved over and above "force, threat and intimidation," then it seems to entertain the possibility that a woman may be raped yet consent thereto. This mindset jives with what MacKinnon says about male rationality, i.e., for men, "force and desire are not mutually exclusive."[8] Quoting Carol Patemen, MacKinnon describes the mindset thus:

> Consent as ideology cannot be distinguished from habitual acquiescence, assent, silent dissent, submission or even enforced submission. Unless refusal of consent or withdrawal of consent are real possibilities, we can no longer speak of 'consent' in any genuine sense.... Women exemplify the individuals whom consent theorists declared are incapable of consenting. Yet, simultaneously, women have been presented as always consenting, and their explicit non-consent has been treated as irrelevant or has been reinterpreted as consent.[9]

For MacKinnon, therefore, "forced sex as sexuality is *not exceptional* in relations between the sexes but constitutes the social meaning of gender."[10]

The Court may not agree with MacKinnon's theory but it must nonetheless admit that it entertained the possibility that the question of consent is a superfluity. Its position on the matter, however, is rather ambiguous. For instance, in *People v. Capareda*,[11] Justice Callejo, summarizing the jurisprudence on the matter, explains:

> Case law has it that the failure of the victim to shout or offer tenacious resistance does not make voluntary the victim's submission to the criminal acts of the accused. Resistance is not an element of rape and the absence thereof is not tantamount to consent. The law does not impose upon a rape victim the burden of proving resistance. In fact, physical resistance need not be established in rape when intimidation is exercised upon the victim and she submits herself against her will to the rapist's lust because of fear for life or personal safety. Indeed, it has been said that, in rape cases, it is not necessary that the victim should have resisted unto death or sustained injuries in the hands of the rapist. It suffices that intercourse takes place against her will or that she yields because of a genuine apprehension of great harm.[12]

It is obvious that the Court is fumbling with the problem. For the most part, it does seem to uphold that non-consent must be proved, i.e. "that intercourse takes place against her will"; but then, it also categorically states that "resistance is not an element of

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[8] C. MACKINNON, *op. cit. supra* at note 1 at 178.

[9] *Id.* at 298, citing Carol Patemen, *Woman and Consent*, 8 POLITICAL THEORY 149, 150 (1980).

[10] *Id.* at 179. Thus, MacKinnon makes the case that even when it appears that the woman has consented the Court must nonetheless realize that, "[t]he deeper problem is that women are socialized to passive receptivity; may have or perceive no alternative to acquiescence; may prefer it to the escalated risk of injury and the humiliation of a lost fight; submit to survive." *Id.* at 177.

[11] People v. Capareda, *supra*

[12] People v. Capareda, supra (citations omitted).

rape." The question then becomes, how does one prove non-consent if physical resistance is not a requisite. Could the victim's testimony to the effect that she did not consent to sex suffice?

Another interesting aspect of the Court's consent docrine is the relationship between the character of the victim and the demand for proof of non-consent. Examining the rape cases decided by the Supreme Court between January 2004 and March 2006, we see that most of the cases involved minor victims who were often times raped by persons wielding moral ascendancy over them (e.g. fathers, uncles, guardians). Considering the comparative size, strength, and age of the "minor victim" and the "adult accused," as well as their relationship to one another (when applicable), the Court has had relatively little difficulty convicting the accused; and, generally, the prosecution has not been expected to prove resistance. The moment however that the woman does not fit into this "rape victim standard," the Court suddenly becomes preoccupied with questions of resistance and non-consent.

We see this in the peculiar case of *People v. Relox*:[13] There, the victim, a thirty three year old mother was allegedly raped by her own sixty year old father. The Court dismissed the prosecution's argument that resistance is not an element of rape and instead argued that, "While it may be said that *tenacious resistance* from the victim is not a requirement for the crime of rape, the lack of evidence signifying an *obstinate resistance* to submit to the intercourse, naturally expected from an unwilling victim, could likewise indicate that no rape has occurred."[14] (emphasis supplied) In other words, the rule seems to be that "tenacious resistance" is not a requirement but "obstinate resistance" is. To say the least, this is an absolutely confusing position. Nonetheless, based on this rather absurd premise, the Court went on to acquit the accused.[15]

Furthermore, the Court the "doctrinal rule that as between a father and his daughter in incestuous sexual assault, the former's moral ascendancy and influence over the latter sufficiently substitutes force and intimidation."[16] The Court instead held that, because the victim was a thirty-three year old mother, "she should already be aware of how immoral and appalling it is to have sexual intercourse with her father so that, no matter how obedient she was when she was a child, she would not have succumbed to her father's advances without a fight."[17] The absurdity of this rationale is elucidated by the following questions: When a father rapes his daughter on the eve of her eighteenth

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[13] G.R. No. 149395, April 28, 2004.

[14] *Ibid.*

[15] The Court made following findings:

1. "[I]t is incredible that Adela could not put up more resistance against appellant who was already old and unarmed the entire time." People v. Relox, *supra.*
2. "[A]ssuming that her body was pinned down, there was nothing to prevent Adela from screaming in order to wake up the children or dissuade her father from continuing his intention." *Ibid.*
3. "[T]he fact that Adela failed to flee at a moment when she was let go by appellant remains unexplained." *Ibid.*

[16] People v. Relox, *supra.*

[17] *Ibid.*

birthday, is non-consent presumed? What happens if he rapes his daughter on the day right after her eighteenth birthday? Must she now resist, fighting tooth and nail and screaming for help? Or, prescinding from the rationale of the Court, would it be more proper to say that it is when the adult daughter has children of her own that she is expected to resist? What then of adult daughters without children? Are they still expected to resist?[18]

Mackinnon, offers an insightful explanation of the Court's rationale when she speaks of the way in which women have been divided into "spheres of consent."[19] She writes:

> Which category of presumed consent a woman is in depends upon who she is relative to a man who wants her, not what she says or does. These categories tell men whom they can legally fuck, who is open season and who is off limits, not how to listen to women. The paradigm categories are the virginal daughter and other young girls, with whom all sex is proscribed, and the whorelike wives and prostitutes, with whom no sex is proscribed. Daughters may not consent; wives and prostitutes are assumed to, and cannot but....
>
> All women are divided into parallel provinces, their actual consent counting to the degree that they diverge from the paradigm case in their category. Virtuous women, like young girls, are unconsenting, virginal, rapable. Unvirtuous women, like wives and prostitutes, are consenting, whores, unrapable.[20]

Thus, it may be explained that in *Relox* the Court held that adult daughters with children of their own ought to be classified amongst the unvirtuous who are capable of consenting and must therefore resist the advances of a rapist. Otherwise, the will be presumed to consent to the rape.

In summary, the first part of his paper has argue (1) that although the element of consent or non-consent should be a non-issue, the Court has nonetheless entertained it; (2) that the Court's has, however, liberally interpreted non-consent in favor of the victim; and, (3) that the Court has not applied this liberal interpretation of non-consent to victims who do not fall into the "sphere" of rapable women.

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[18] MacKinnon explains the inanity of the position:

> The age line under which girls are presumed disabled from consenting to sex, whatever they say, rationalizes a condition of sexual coercion which women never outgrow. One day they cannot say yes, and the next day they cannot say no. The law takes the most aggravated case for female powerlessness based on gender and age combined and, by formally prohibiting all sex as rape, makes consent irrelevant on the basis of an assumption of powerlessness. This defines those above the age line as powerful, whether they actually have power to consent or not. The vulnerability girls share with boys — age — dissipate with time. The vulnerability girls share with women — gender — does not. C. MACKINNON, *op. cit. supra* note 1 at 175-76.

[19] C. MACKINNON, *op. cit. supra* note 1 at 175.

[20] *Ibid.*

II. THE SWEETHEART DEFENSE

In *Relox*, we saw how the liberal non-consent doctrine was not available to the adult daughter of an alleged rapist. In this section, we see how the same happens when the accused and the victim are proven to be "sweethearts."

As noted in the introduction, the sweetheart defense is a positive defense of the accused who admits that he indeed had sex with the victim but then contends that the sex was consensual because he and the victim were sweethearts. In order for the defense to operate, the accused must first prove that indeed he and the victim were sweethearts. The manner in which this proof is to be effected has been clearly laid down by the Court. In the recent case of *People v. Calongui*,[21] the Court held that,

> Well-settled is the rule that the sweethearts defense must be proven by compelling evidence, specifically, that the accused and the victim were lovers and that the victim consented to the alleged sexual relations. Appellant's claim that he and Marinel were lovers remained uncorroborated and unsubstantiated. No documentary evidence like mementos, love letters, notes, pictures and the like were presented.[22]

This requisite of proof through "mementos, love letters, notes, pictures and the like" has been a jurisprudential rule for at least three decades.[23]

After proving that he and the victim were sweethearts, the accused is not yet in the clear as the Court has repeatedly emphasized that "relationship does not, by itself, establish consent for love is not a license for lust."[24] The catchphrase, "love is not a license for lust," was coined by Justice Cruz' in the 1998 case of *People v. Mercado*.[25] Interestingly, however, it appeared as mere obiter in said case. It is not therefore surprising to find that although the catchphrase is often repeated, the trend of decisions is that when the victim and the accused are proven to be sweethearts, liberal presumptions in favor of the victim's non-consent cease to operate.[26]

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[21] G.R. No. 170566, March 3, 2006.

[22] *Ibid.* (citations omitted)

[23] The inquiry into the existence of such documentary and object evidence was raised as early as June 28, 1974 in the People v. Sacabin. 156 Phil. 707 (1974). The formula of "mementos, love letters, notes, pictures" however, is traceable, to People v. Soterol, a decision rendered more than ten years after Sacabin. G.R. No. 53498, December 16, 1985. Since then, it has been repeatedly upheld as a requisite of the sweetheart defense. For a sampling of such cases, see People v. Tismo, G.R. No. 44773, December 4, 1991; People v. Casao, G.R. No. 100913, March 23, 1993; People v. Lozano, 357 Phil. 397 (1998); People v. Lampaza, 377 Phil. 119 (1999); People v. Garces, Jr. 379 Phil. 919 (2000); People v. Flores 423 Phil. 687 (2001); People v Padrigone, 431 Phil. 661 (2002); People v. Ayuda G.R. No. 128882, October 2, 2003; People v. Bautista G.R. No. 140278, June 3, 2004; People v. Antonio, G.R. No. 157269, June 3, 2004; People v. Sonido, G.R. No. 148815, July 7, 2004; People v. Calongui, G.R. No. 170566, March 3, 2006.

[24] This rule was most recently reiterated in the same case of People v. Calongui, *supra*.

[25] G.R. No. 61223, May 28, 1988.

[26] See People v. Castro, 157 Phil. 456 (1974); People v. Mendiguarin, G.R. No. 49616, August 20, 1979; People v. Gabilan, 200 Phil. 434 (1982); People v. Olalia, 213 Phil. 128 (1984); People v. Geneveza, G.R. No. 74047, January 13, 1989; People v. Pascua, G.R. No. 82302, December 21, 1989; People v. Castillon, G.R. No. 100586, January 15, 1993; People v. Dulay, G.R. No. 95156-94, January 18, 1993; People v. Godoy, 321 Phil. 279 (1995);

A review of jurisprudence reveals only one case where the Court seriously applied the *Mercado* pronouncement that "love is not a license for lust." This is the 1990 case of *People v. De Dios*.[27] There, the victim, a prominent socialite,[28] admitted that she was very much in love with the accused but that she was nonetheless abducted by him while she was visiting her sickly mother in Makati Medical Center. The accused tricked her into getting into his Kombi to supposedly pick up his sister at nearby Assumption College. Instead, however, he took her to his house in Baguio City where he then raped her.

Even in this case, however, we find the Court struggling with the notion that "love is not a license for lust." Justice Padilla, the *ponente*, writes:

> Going over the voluminous record of the case, the Court cannot escape the thought that there had surged an overpowering fit of passion which blinded the appellant and led him to commit the crime. Was he overcome by bestial instinct? Or was he provoked or incited to execute the act? Only the appellant knows. Unfortunately, he did not take the witness stand to explain his side.[29]

The good Justice seems surprised that a rape could happen between lovers. Instead, he goes so far as to suggest that the rape could have been "provoked or incited." Is Justice Padilla suggesting that the victim brought the rape upon himself? MacKinnon would explain the Court's position thus: "Fundamentally, desirability for men is supposed a woman's form of power because she can both arouse it and deny its fulfillment. To woman is attributed both the cause of man's initiative and the denial of his satisfaction."[30] In the case, the rape immediately followed the victim's act of sitting in the *sala* and refusing to go into the bedroom with the accused and have sex with him. In MacKinnon's words, Justice Padilla's ponencia seems to operate on the presumption that "[a]s to adult women, to the extent an accused knows a woman and they have sex, her consent is inferred."[31] Could the provocation Justice Padilla refers to be the simple fact that the victim said, "No," to sex? It seems that, even in this case where the Court upheld Justice Cruz's "love is not a license for lust" we still see that there is an underlying sense that sex between sweethearts is always consensual.

People v. Subido, 323 Phil. 240 (1996); People v. Bawar, 330 Phil. 884 (1996); People v. Salem, 345 Phil. 1087 (1997); People v. Domogoy, 364 Phil. 547 (1999).

[27] G.R. No. 58174, July 6, 1990.

[28] This paper does not look into the consequences of the victim's social class on the sweetheart defense. However, it might be pointed out that in the cases of People v. Ramos and People v. Oga, discussed *infra*, the victims were not prominent socialites.

[29] People v. de Dios, *supra*.

[30] C. MACKINNON, *op. cit. supra* note 1 at 172.

[31] *Id.* at 176. McKinnon writes, in this regard:

> Like heterosexuality, male supremacy's paradigm of sex, the crime of rape centers on penetration. The law to protect women's sexuality from forcible violation and expropriation defines that protection in male genital terms.... This definitive element of rape centers upon a male-defined loss.... This may explain the male incomprehension that, once a woman has had sex, she loses anything when subsequently raped. To them women have nothing to lose. *Id.* at 172-73.

Furthermore, a re-examination of the jurisprudential root of the caveat "love is not a license for lust" in *Mercado* reveals that Justice Cruz can hardly be considered a feminist. In the same paragraph from which the catchphrase is taken we find the good Justice trampling upon the whole issue of consent by suggesting that rape married women cannot refuse their husband sex:

> Some authorities have opined that rape cannot be committed by a husband upon his wife except where they are legally separated. [J. Ramon Aquino's Revised Penal Code, p. 1682 (1977 Ed.); J. Luis B. Reyes, Revised Penal Code, p. 830 (1977 Ed.)] But from a mere fiancee, a man definitely cannot demand sexual submission, and worse employ violence upon her for the purpose, or the mere justification that they are in love. Love is not a license for lust, at least upon a sweetheart only who, unlike the wife, has a right to resist the passionate advances of her partner. Hence, even if Carmencita and Mercado really were secret lovers, the accused-appellant nevertheless committed the crime of rape when he dragged her to the ricefield over her angry protests, physically overcame her spirited resistance, and sexually took her against her will.[32]

As *Relox* did with adult daughters, *Mercado* places the sweetheart in a strange position between MacKinnon's sphere's of consent. She is taken out of the sphere occupied by unrapable prostitutes and wives but not quite placed in the sphere of rapable young girls. The problem however is that the Court never questions the paradigm that conceives women as categorized into particular spheres of consent.

III. *PEOPLE V. RAMOS* AND *PEOPLE V. OGA*

From January 2004 to March 2006, the sweetheart defense was invoked by the accused in rape cases a total of fourteen times.[33] For the most part the Court did not believe that the accused and the victim were sweethearts and thus convicted the accused. But on two occasions that the Court did find the accused and the victim to be sweethearts, the accused was acquitted. These are the cases of *People v. Ramos*[34] and *People v. Oga*.[35]

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[32] People v. Mercado, G.R. No. 61223, May 28, 1988.

[33] People v. Limos, G.R. Nos. 122114-17, January 20, 2004; People v. Nuguid, G.R. No. 148991, January 21, 2004; People v. Canon, G.R. No. 141519, January 22, 2004; People v. Ramos, G.R. Nos. 155292-93, February 13, 2004; People v. Acero, G.R. Nos. 146690-91, March 17, 2004; People v. Gabelino, G.R. Nos. 132127-29, March 31, 2004; People v. Oga, G.R. No. 128363, May 27, 2004; People v. Capareda, G.R. No. 128363, May 27, 2004; People v. Rapisora, G.R. No. 147855, May 28, 2004, Callejo, Sr. J.; People v. Antonio, G.R. No. 157269, June 3, 2004; People v. Bautista, G.R. No. 140278, June 3, 2004; People v. Sonido, G.R. No. 148815, July 7, 2004; People v. Calongui, G.R. No. 170566, March 3, 2006.

[34] G.R. Nos. 155292-93, February 13, 2004.

[35] G.R. No. 128363, May 27, 2004.

A. THE TWO CASES

1. *People v. Ramos*

In the first case, *People v. Ramos*,[36] penned by Justice Azcuna, the sixteen year old victim alleged that, at around 9 p.m. on February 25, 2000, the accused, a thirty-one year old furniture varnisher whom she knew to be employed by one of her neighbors, forcibly entered her house where she was alone with only her six month old niece and seven year old nephew. She claims that the accused pointed a knife at her and threatened that if she would shout, he would kill her, her niece and her nephew. He then pulled her towards the bedroom.

In the words of the Court, "[s]ensing that she could not stop appellant from leading her to the other room, she first patted her niece to sleep [and]... paused to fix the mosquito net covering her sleeping nephew."[37] In the bedroom and under the threats of the accused, the victim undressed herself and was then raped by the accused. The Court took notice of the fact that before inserting his penis into her vagina, the accused first kissed the victim's lips, face, abdomen and vagina for a full five minutes, and, that during this entire time, the victim did not shout or call for help. The accused remained with the victim in the house for six more hours.

At three a.m. of the following day, he pulled up the victim to get a glass of water. After they both gargled, they returned to the room. "[T]his time, [the accused] sucked her breasts, touched her vagina and asked her to hold his penis."[38] The victim explained that "she was not able to shout or run away since the [accused] continued to point a knife at her."[39] This second incident of sexual intercourse lasted for around fifteen minutes.[40]

At 3:45 a.m., the accused asked her for her class schedule at the Pangasinan National High School and asked her for her picture, dictating the following words he wanted written on the back of the photograph: "To Ricky, [k]eep this as a simple remembrance at (sic) me."[41] At 4 a.m., the accused left. Three days after the incident, the victim confided in her brother, a policeman. She admitted that when she told her brother, he "got angry and slapped her three times."[42]

The accused, on the other hand, admitted that he had sex with the victim but claimed that they had been sweethearts since January, 1999 or one whole year prior to the incident. As proof he offered his own testimony that he had given the accused a t-shirt, face towel, and a ring; that he once watched a movie with her, her nephew and

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[36] G.R. Nos. 155292-93, February 13, 2004.
[37] *Ibid.*
[38] *Ibid.*
[39] *Ibid.*
[40] *Ibid.*
[41] *Ibid.*
[42] *Ibid.*

niece and that they kissed and embraced each other in the moviehouse; that the victim gave him "her picture with her handwritten note at the back" and her "class schedule so that he could fetch her everyday";[43] that they went out on dates about three times a week; and that they attend five dawn masses before Christmas 1999. He also offered the testimonies of his father and uncle who said that they often saw the accused together with the victim. The barangay kagawad also testified that when he met with the accused and the victim, the latter admitted that she was the former's lover.

The accused went on to explain that the rape charge was instigated by the victim's policeman-brother. The father of the accused testified that when he learned of the rape cases against his son, he went to the victim's house and proposed marriage but that the victim's brother refused to speak with him. Later, however, the victim's brother offered to withdraw the case if the accused would pay him one million pesos.

The Court appreciated the sweetheart defense and acquitted the accused. It justified its decision by, first, pointing out that the victim and the accused "were widely known in their community to be sweethearts, as evidenced by the testimonies of the witnesses for the defense, which was not rebutted by the prosecution."[44] Second, the Court found that the victim's testimony was replete with "details inconsistent with a situation of a woman sexually abused."[45]

> For instance, complainant alleged that the appellant forced the door open on the night when the alleged rape occurred. If indeed the presence of appellant made her fear for her life and the lives of her niece and nephew, she would not have readily let the violent intruder cross their threshold. She would have called for help from neighbors who could hear her. Also, after appellant allegedly barged in with a deadly weapon held in his hand, she would not have had the time to put her niece to sleep and check on her slumbering nephew before going with him into the other room. As stated by the Solicitor General, complainant's conduct was contrary to the normal behavior of a person who claims to have been raped under threat of death. Indeed, it is strange for a victim of rape still to have time first to pat her niece to sleep and then to fix her nephew's mosquito net before facing an armed aggressor demanding to have intercourse with her....
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> From 9 p.m. of February 25, 2000 to 4 a.m. of February 26, 2000, appellant lingered in the house of complainant. It is quite impossible that in the seven hours appellant spent in complainant's house, the latter did not find any opportunity to call or even signal for help. We note that the family of complainant's brother lives right next to the house of complainant. Complainant herself testified that her sister-in-law and her children, were in the house next door on that fateful night. Moreover, about two and a half meters away from the room where the alleged rape occurred is the house of another neighbor....[46]

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[43] *Ibid.*
[44] *Ibid.*
[45] *Ibid.*
[46] *Ibid.* (citations omitted)

Third, the Court held that the leisurely conduct of the accused is not the normal conduct of a "rapist who is pressed for time and seeking to avoid being caught."[47] The Court noted the following:

> Appellant waited while complainant put her niece to sleep. He waited again while complainant checked on her sleeping nephew. When they were finally alone in the other room, appellant took his time for some foreplay before engaging in actual intercourse. At dawn the next day, appellant and complainant took time to freshen their breaths by gargling before again engaging in sexual intercourse. Appellant even had the time to wait around and allegedly threaten complainant into writing for him her class schedule and a short note dedicated to him at the back of her photograph.

Fourth, the Court took special notice of the behavior of the brother of the victim. The Court explained itself thus:

> We have found in some cases that a supposed victim, or her relatives, resort to filing unfounded complaints for rape in an attempt to redeem the lost honor of the complainant, the latter having been caught in pre-marital intercourse with her alleged rapist. Here, it is apparent that appellant and complainant were discovered to have engaged in pre-marital intercourse by complainant's brother who disapproved of their relationship.[48]

2. *People v. Oga*

The second case, *People v. Oga*,[49] is especially perplexing. Here, the Court did not enforce the standard of proof required of the sweetheart defense but nonetheless acquitted the accused because the victim failed to resist his advances.

According to the fourteen-year old victim, at around 10:00 p.m. on August 9, 1999, the accused, a twenty-four year old construction worker and her neighbor, summoned her to his barracks (a small shanty-like dwelling made of galvanized sheets). She obliged, thinking that she would be sent on an errand to buy cigarettes or liquor. Once inside the barracks, however, the accused grabbed her, disrobed her, pinned her down, separated her legs and inserted his penis into her vagina. It was only four hours later, or at around 2:00 a.m., that she managed to finally kick the galvanized iron walls of the barracks, which promptly woke up her parents, who lived three meters away. A physical examination conducted shortly thereafter indicated that the victim had a "fresh hymenal laceration, with no evident sign of extragenital physical injuries on her body."[50]

The accused, who was the lone witness of the defense, did not deny that he had sexual intercourse with the accused but argued that three months prior to the incident, he and the victim had become sweethearts; and that on the night of the incident it was

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[47] *Ibid.* (citations omitted)
[48] *Ibid.*
[49] G.R. No. 128363, May 27, 2004.
[50] *Ibid.*

the victim who came into his barracks. He claims that he ordered her to leave but that she embraced him and professed her love for him When the victim finally stripped and laid down in bed with him he concedes that "[s]ince he [was] a man, he gave in and had sex with her."[51]

Interestingly, the Court phrased the issue of the case thus: "How would parents react if they catch their teen-aged daughter naked and lying beneath a naked man?"[52] The Court then went on to suggest that the rape charge was actually instigated by the father of the victim and justified the acquittal of the accused by arguing that the victim failed to sufficiently resist the rape.

First, the Court disagreed that there was no evident disparity in the age and strength of the accused and victim despite the fact that the latter was only fourteen years old and the former was a twenty-four year old construction worker. The Court held:

> [A]side from the claim that he was 24 years [old] at the time of the alleged rape and he was a construction worker, no other physical statistics were mentioned in the records, like his height, weight, and built. We cannot presume that because the [accused] was older and a construction worker, he was of larger built which naturally aided him in the employment of the necessary force and intimidation to completely overwhelm and ultimately rape [the victim].[53]

Second, the Court argued that the victim was not physically prevented from resisting the accused's advances, from shouting, or from attempting to escape. It should be noted that, in this case, the Court directly contradicted its pronouncement in *Suarez*[54] that "people may react differently to the same set of circumstances" and that "there is no standard reaction of a victim in a rape incident."[55] Instead the Court held that in this case, the victim's "overall deportment during her ordeal defies comprehension and the reasonable standard of human conduct when faced with a similar situation."[56]

The Court, appreciating a number of circumstances,[57] explained:

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[51] *Ibid.*
[52] *Ibid.*
[53] *Ibid.*
[54] G.R. Nos. 153573-76, April 15, 2005.
[55] *Ibid.*
[56] People v. Oga, G.R. No. 128363, May 27, 2004.
[57] The Court made the following findings:

1. That the accused used no physical force or intimidation (with a knife, bolo);
2. That the victim did not scream for help or attempt to escape or fight of the accused;
3. That it is unusual that the victim immediately acceded when the accused summoned her to his barracks;
4. That the medical examination of the victim did not reveal extragenital injuries and that none of the victims clothes were torn or damaged;
5. That the accused's threat was not determinative of intimidation because it came only after the consummation of the sexual act;
6. That the victim remained in the accused's barracks for four hours after the rape; and
7. That the father of the victim testified that he "surprised the victim and accused".

People v. Oga, *supra.* (citations omitted)

> [The victim's] demeanor was simply inconsistent with that of an ordinary Filipina whose instinct dictates that she summon every ounce of her strength and courage to thwart any attempt to besmirch her honor and blemish her purity. True, women react differently in similar situations, but it is unnatural for an intended rape victim, as in the case at bar, not to make even a feeble attempt to free herself despite a myriad of opportunities to do so. This constrained us to entertain a reasonable doubt on the guilt of the appellant.[58]

As emphasized, the accused offered no evidence, other than his lone testimony, of his sweetheart relationship with the victim. It therefore appears that the Court accepted the sweetheart theory of the defense not so much on the strength of the evidence of the defense but on the weakness of the prosecution's evidence. As the Court puts it: "Though the 'sweetheart theory' does not often gain approval, we will not hesitate to set aside a judgment of conviction where, as in the present case, the guilt of the accused has not been proved beyond reasonable doubt."[59]

B. COMMENT

First, from a purely legal perspective. *Oga* carves out an extreme exception in sweetheart defense jurisprudence, for the standard proof of relationship (love letters, mementoes, notes, pictures)[60] was completely set aside. The argument of the defense rode on the lone testimony of the accused. This unexplained turn in the jurisprudential rule is unconscionable. It allows the Court to examine the amount of resistance put up by the victim (a requisite unnecessary under the statute books) without the defense having categorically proven that she and the accused are sweethearts. Thus, *Oga* seems to lay down the rule that if a rape victim does not physically resist a rapist, not only is she considered to have consented to the rape but she is also presumed to be the sweetheart of the accused.

Second, the Supreme Court recently reiterated the following jurisprudential rule regarding the testimony of minors on their alleged rape:

> The testimony of child-victims are normally given full weight and credit, since when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed. Youth and immaturity are generally badges of truth and sincerity. No woman, least of all a child, would concoct a story of defloration, allow an examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her.[61]

Despite the fact that in *Ramos* and *Oga* the victims were minors, the Court opted to forego the above rule. In *Oga*, the Court explained that the rule on minority did

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[58] People v. Oga, *supra.*

[59] *Ibid.*

[60] Most recently upheld in People v. Calongui, G.R. No. 170566, March 3, 2006.

[61] People v. Corpuz, G.R. No. 168101, February 13, 2006 (citations omitted). In Corpuz, the victim was thirteen years of age. Whereas in Ramos and Oga, the victims were sixteen and fourteen respectively.

not apply because "the credibility of a witness' testimony is whether the testimony is in conformity with common knowledge and consistent with the experience of mankind and that whatever is repugnant to these standards becomes incredible and lies outside of judicial cognizance."[62] The problem with the Court's decision is that "the experience of mankind" upon which the victim is judged is precisely that, "the experience of *man*kind." MacKinnon would put the Court's myopia thus:

> With rape, because sexuality defines gender norms, the only difference between assault and what is socially defined as a noninjury is the meaning of the encounter to the woman. Interpreted this way, the legal problem has been to determine whose view of that meaning constitutes what really happened, as if what happened objectively exists to be objectively determined. This task has been assumed to be separable from the gender of the participants and the gendered nature of their exchange, when the objective norms and the assailant's perspective are identical.[63]

What happens to the minority of the victim vis-à-vis the sweetheart defense from the supposed "objective" standpoint of the Court? As per *Ramos* and *Oga*, the conclusion is simple, relying once again on MacKinnon's sphere's of consent, we can conclude that when the victim is the sweetheart of the accused, she is automatically transposed into the sphere of consent occupied by unrapable prostitutes and married women, regardless of her minority. Otherwise put, minors cannot be raped by their sweethearts because sex is always presumed. Furthermore, as shown by these two cases, the age of the accused is a non-factor, i.e. he need not be a minor like the victim. In *Ramos*, the sixteen year old victim was raped by a thirty-one year old furniture varnisher, and, in *Oga*, the fourteen year old victim was raped by a twenty-four year construction worker.

Third, in both cases, the Court explains that the rape charges were reactions of the male "father figures" of the victims. Kate Millet refers to this as the traditional view of rape as "an offense one male commits upon another — a matter of abusing 'his woman.'"[64] Thus, in *Ramos*, the rape charges were attributed to the policeman-brother of the victim, and, in *Oga*, they were attributed to the father of the victim. In *Ramos*, the Court looked at the fact that the policeman-brother of the victim slapped her three times after the incident; and in *Oga*, the court pointed out that "the testimony of Irene's father that he surprised Irene and appellant completely naked" increased their suspicion "that what took place that fateful night... was consensual sex."[65] Furthermore, in *Oga* the Court prefaced the entire decision with the question, "How would parents react if they catch their teen-aged daughter naked and lying beneath a naked man?"[66] In effect, the two cases concerned themselves with the actions of the father figures rather than the victims.

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[62] People v. Oga, G.R. No. 128363, May 27, 2004 (citations omitted).
[63] C. MACKINNON, *op. cit. supra* note 1 at 180.
[64] KATE MILLET, THEORY OF SEXUAL POLITICS IN SEXUAL POLITICS, 137 (1969).
[65] People v. Oga, *supra*.
[66] *Ibid.*

This utter displacement of the woman's experience of rape is explained by MacKinnon's comments regarding the treatment of women as property. She writes, "Women's sexuality is, socially, a thing to be stolen, sold, bought, bartered, or exchanged by others. But women never own or possess it, and men never treat it, in law or in life, with the solicitude with which they treat property. To be property would be an improvement."[67] The two cases offer a clear example of what MacKinnon means. When the victims were "taken" by their rapists, their own perception of what took place became inconsequential. Instead the Court was comfortable to listen to what the men had to say. The brother's anger and the father's surprise apparently spoke more eloquently than the categorical statements of the two victims that they were raped.

In summary, we see how the Court, in *Ramos* and *Oga* has thought consent and rape from a male perspective by (1) waiving the requisite documentary and object evidence to prove the sweetheart relationship; (2) dismissing the minority of victims when considering the credence of their testimonies; and (3) paying closer attention to the reaction of father figures rather than the victims themselves.

CONCLUSION

Professor Ruiz-Austria of the University of the Philippines College of Law has suggested that a feminist revolution in legal thought might be effected not so much by changing law but by "'unmasking' the sexist meaning in law."[68] This paper has sought to contribute to this "unmasking" by simply pointing out that recent rape jurisprudence still continues to nurture an attitude of suspicion against the testimony of female rape victims, especially when they slip out of MacKinnon's traditional spheres of women.

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[67] C. MACKINNON, *op. cit. supra* note 1 at 172.

[68] Carolina S. Ruiz-Austria, *Sex, Sexuality and The Law: The Construction of the Filipino Woman's Sexuality and Gender Roles in the Philippine Legal System*, 1 WOMEN'S JOURNAL ON LAW & CULTURE 25, 54 (2001).