BALANCING THE INTERESTS OF COMPLAINANT AND ACCUSED IN RAPE CASES: SOME EVIDENTIARY CONCERNS

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I. INTRODUCTION

> Even with laxity associated with the sexual permissiveness of the times, if not precisely because of it, the law continues to view with extreme distaste, to put it at its mildest, the crime of rape. The penalty imposed is characterized by severity; under certain circumstances, it could be death. That is merely to reflect the societal feeling of revulsion for the degradation imposed on an unwilling victim or one presumed unable to give consent. As noted, with the changing mores, there should be less occasion for a resort to violence or intimidation.[1]

This is but one of the instances where our Supreme Court has shared its views on the changing moral attitudes and cultural patterns of today. The times have likewise been described as "a time of moral decadence"[2] when teenagers are "sex conscious, outgoing frank and aggressive"[3] with a "propensity to succumb to drug addiction and to indulge in practices which their parents consider immoral or unconventional."[4]

Unknown to many, a large number of criminal cases brought up to the Supreme Court are rape cases. The fact that most of them are brought up on automatic review serves to amplify two things: the maximum penalty for rape is death and yet the crime continues to stay on top of the chart. And this notwithstanding the fact that it is one of the most underreported: "95% of rapes are unrecorded; if recorded, not investigated; if investigated, not prosecuted; if prosecuted, not convicted."[5]

The constitutional right of the accused to be presumed innocent is said to be most threatened in this kind of charge because it is "an accusation easy to be made, hard to prove, but harder to disprove."[6] The indignation produced by the heinousness of the offense may lead the court to convict a person although the quantum of evidence does not justify it. The court

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1 People v. Lopez, G.R. No. 41974, November 29, 1976, 74 SCRA 205-206; *see also* People v. Baylon, G.R. No. 36785, May 29, 1974, 57 SCRA 114 and People v. Andal, G.R. No. 39763, March 8, 1976, 70 SCRA 30.

2 People v. de Castro, G.R. No. 62945, September 30, 1983, 124 SCRA 936, 936 (The Court stated that rape by a father of his own daughter is no longer in rarity).

3 People v. Flores, G.R. No. 60665, October 26, 1983, 125 SCRA 244, 249.

4 People v. Lintag, G.R. No. 62324, December 29, 1983, 126 SCRA 511, 517.

5 Lecture by Dr. Pedro P. Solis, M.D., LL.B., University of the Philippines.

6 See *infra* note 28.

has oftentimes stated that "a modest Filipina will not subject herself to a physical examination of her private parts and to the shame and embarrassment of a public trial if it were not to bring the perpetrator to justice."[7]

On the other hand, concern over convicting the innocent and a perceived change in social attitudes relating to women and sex may have a tendency to admit the most damaging evidence of the complainant's past sexual conduct, no matter how irrelevant it may be, thereby violating complainant's right to protection and privacy and further discouraging the reporting of an already underreported offense. (Note that even prostitutes may be victims of rape.) It has even been opined that rape is the one crime wherein defendant's guilt is to be established by proof of complainant's innocence. Then again, a limitation on its admissibility, if carried too far, may infringe upon defendant's rights confront his witnesses face to face and to a fair trial.

In every rape case, therefore, the interest of the state in upholding the constitutional rights of the accused (particularly his rights to be presumed innnocent and to confrontation) need to be balanced against its interest in protecting the alleged victim from harrassment and other forms of indignities. The object of this paper is to identify the competing rights of complainant and accused, survey the Supreme Court decisions on rape, and study how the highest tribunal of the land has treated this problem of striking a delicate balance between these competing interests.

II. RAPE: DEFINITION AND PECULIARITIES

The legal provision defining and prescribing penalties for rape[8] reads:

> Art. 335. When and how rape is committed. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:
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> 1. By force or intimidation;
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> 2. When the woman is deprived of reason or otherwise unconscious; and
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> 3. When the woman is under 12 years of age, even though neither of the circumstance mentioned in the two next preceding paragraphs shall be present.
>
> The crime of rape shall be punished by *reclusion perpetua.*
>
> Whenever the crime of rape is committed with the use of deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* or death.
>
> When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.
>
> When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall likewise be death.
>
> When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death.

[7] See *infra* notes 135-152.

[8] REV. PEN. CODE, Art. 335.

The offense has been described as "peculiar."[9] It is a gender-based crime, i.e., a crime of man against woman. Moreover, although it is not expressly provided for in the law, a husband cannot be held guilty of raping his own wife unless they are legally separated[10] and except as a principal by inducement or indispensable cooperation or as an accomplice.[11] The situation has been succinctly described thus: "when a woman says 'I do', she give up her right to say 'I won't.' "[12] In fact, a man cannot be held guilty of raping his future wife because "marriage of the offender with the offended party shall extinguish the criminal action or remit the penalty already imposed upon him."[13] What is more, this marriage has the same effect on the co-principals, accomplices, and accessories after the fact.[14] In other words, when a woman says 'I do', she gives up her right to say 'I didn't'.

While the element of force is an element in a number of other crimes, rape is peculiar in that it is required that the victim meet that force with reasonable resistance.[15] By contrast, in a crime like robbery,[16] also a 'non-consensual and forcible version of an ordinary human interaction,' the law imposes no special burden of opposiiton. It simply inquires whether the accused took something from another by violence or intimidaton.[17]

Finally, rape is a crime upon which the law imposes a heavy penalty. Before Article 335 was amended, simple rape was penalized by *reclusion temporal* or 12 years and 1 day to 20 years. Republic Act No. 4111 raised the penalty to *reclusion perpetua* or life imprisonment and made qualified rape a capital offense. The severity of the penalty shows the legislative intent "to curb the rampancy of sexual assaults ensuing from the lawlessness and deterioration of morals occasioned by the war" and "to protect women against the unbridled bestiality of persons who cannot control their libidinous proclivities."[19] The policy of the state regarding the offense has been described thus:

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9 Berger, *Man's Trial, Woman's Tribulation: Rape Cases in the Courtroom*, 77 COLUM. L. REV. 1, 7 (1977).

10 2 REYES, REVISED PENAL CODE 853 (1981).

11 *Id.*

12 *The Marital Rape Exemption*, 27 LOY. L. REV. 597 (1981) (quoting Griffin, *In 44 States, It's Legal to Rape Your Wife*, STUDENT LAWYER 21 (1980) (hereinafter cited as *Marital Rape*).

Although the marital rape exemption has been expanded in ten states of the United States to include unmarried cohabitants, a few states have repealed the exemption with apparent intent of allowing the prosecution of a husband for the rape of his wife.

13 REV. PEN. CODE, Art. 344.

14 *Id.*

15 *Rape Reform Legislation and Evidentiary Concerns: The Law in Pennsylvania*, 44 U. PITT. L. REV. 955 (1983). (Hereinafter cited as *Rape Reform*).

16 Robbery is defined as the taking of personal property belonging to another, with intent to gain, by means of violence against, or intimidation of any person, or using force upon anything. Reyes, *supra* note 3, at 513.

17 Berger, *supra* note 9, at 8.

18 R.A. 4111 took effect on June 20, 1964.

19 People v. Manlapaz, G.R. No. 41819, February 28, 1979, 88 SCRA 704, 719 and People v. Babasa, G.R. No. 38072, May 17, 1980, 97 SCRA 672, 682.

> The state policy on the heinous offense of rape is clear and unmistakable. Life is made forfeit under certain circumstances... At first blush, the harshness of the penalty may give cause for concern, considering that by the very nature of its commission, it is both sordid and joyless, the pleasure derived, if any, being minimal. To be thereafter sentenced to a long period of confinement, perhaps for the rest of one's life, even to suffer death, many appear excessive. Nonetheless, there is sound reason for such severity. It is an intrusion into the right of privacy, an assault of human dignity. No legal system worthy of the name can afford to ignore the traumatic consequences for the unfortunate victim and grievous injury to the peace and good order of the community.[20]
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> and
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> ...This is to manifest the high respect our country accords to its female population. Any departure from such a norm would be a betrayal of a deep-seated national tradition.[21]

III. THE COMPETING INTERESTS

A. *Defendant's Right to be Presumed Innocent*

The Right. The presumption of innocence[22] afforded the accused in all criminal prosecutions is discussed in the leading case of *People v. Dramayo*:[23]

> Accusation is not, according to the fundamental law, synonymous with guilt. It is incumbent upon the prosecution to show that culpability lies...[24] Their freedom is forfeit only if the requisite quantum of proof necessary for conviction be in existence. Their guilt must be shown beyond reasonable doubt.... There is need, therefore, for the most careful scrutiny of the testimony of the state, both oral and documentary, independently of whatever defense is offered by the accused. Only if the judge below and the appellate tribunal could arrive at a conclusion that the crime had been committed precisely by the person on trial under such an exacting test should the sentence be one of conviction. It is thus required that every circumstance favoring his innocence be duly taken into account. The proof against him must survive the test of reason; the strongest suspicion must be permitted to sway judgment. The conscience must be satisfied that on the defense could be laid the responsibility for the offense charged; that not only did he perpetrate the act but that it amounted to a crime. What is required then is moral certainty.

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[20] People v. Reyes, G.R. Nos. 36874-76, September 30, 1974, 60 SCRA 126, 127.

[21] People v. Quiazon, G.R. No. 44299, August 31, 1977, 78 SCRA 513, 514.

[22] CONST., Art. IV, sec. 9.

[23] G.R. No. 21325, October 29, 1971, 42 SCRA 59, 63-65 (cited in People v. Reyes, G.R. No. 36874-76, September 30, 1974, 60 SCRA 126, 129; People v. Ramirez, G.R. No. 30635-6, January 29, 1976, 69 SCRA 144, 149; People v. Quiazon, G.R. No. 44299, August 31, 1977, 78 SCRA 513, 521; People v. Nazareno, G.R. No. 45533. November 29, 1977, 80 SCRA 484, 490-491; People v. Sarmiento, G.R. No. 46833, December 28, 1979, 94 SCRA 944, 949; People v. Soriano, G.R. No. 46297, June 19, 1980, 98 SCRA 69, 73; People v. Estacio, G.R. No. 54221, January 30, 1982, 111 SCRA 537, 543; People v. Felipe; G.R. No. 40432, July 19, 1982, 115 SCRA 88, 94.

[24] To this effect, Rule 131 sec. 2, places the burden of proof in all criminal cases on the prosecution.

[25] Similarly, see Rule 133 sec. 2, on the quantum of proof required in criminal cases.

The Supreme Court in the above-mentioned case goes on to define what is meant by 'reasonable doubt' with an excerpt from *US v. Lasada*: "By reasonable doubt is not meant that which of possibility may arise, but it is that doubt engendered by an investigation of the whole proof and an inability, after such investigation, to let the mind rest easy upon the certainty of guilt. Absolute certainty of guilt is not demanded by the law to convict of any criminal charge but moral certainty is required, and this certainty is required as to every proposition of proof requisite to constitute the offense."[26] "Accordingly, the accused should be convicted on the strength of the evidence presented by the prosecution and not on the weakness of the defense."[27]

The Threat. It is said that the constitutional right of the accused to be presumed innocent is most threatened by this kind of charge because, according to the oft-quoted Lord Hale:

> It is true that rape is a most detestible crime, and therefore ought severely and impartially to be punished with death, but it must be remembered that it is an accusation easily made and hard to be proved, and harder to be defended by the party accused, though ever so innocent....
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> [We should] be the more cautious upon trials of offenses of this nature wherein the court and jury may with so much ease be imposed upon without great care and vigilance; the heinousness of the offense many times transporting the judge and jury with so much indignation that they are over hastily carried to the conviction of the person accused thereof by the confidant testimony, sometimes of malicious and false witnesses,[28]

and because, as noted in *U.S. v. Bay*: "Experience has shown that unfounded charges of rape and attempted rape have not infrequently been preferred by women, actuated by some sinister or ulterior and undisclosed motive."[29]

Moreover, when the charge is attempted rape, "It should be borne in mind...[that attempted rape] is among those which may be concocted with great ease since the offended party, in bringing it out, does not run the risk of losing her reputation but, on the contrary, she surrounds herself with a certain halo of heroism for having been able courageously to defend the integrity of her good name and the bulwark of her honor from the assaults of the human beast."[30]

The indignation above-mentioned is best exemplified by such comments as: "the bestiality exhibited by the accused and his moral perversity

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[26] 18 Phil. 90, 96-97 (1910).

[27] People v. Felipe, G.R. No. 40432, July 19, 1982, 115 SCRA 88, 90.

[28] 1 Hale, The History of the Pleas of the Crown, 635, 636 (1847) (quoted by Blackstone in 2 CHITTY'S BLACKSTONE 165 and cited in US v. Flores, 26 Phil. 262, 269 (1913). *See, e.g.*, People v. Quiazon, G.R. No. 44299, August 31, 1977, 78 SCRA 513, 514; People v. Leones, G.R. No. 48727, September 30, 1982, 117 SCRA 382, 394; People v. Pimentel, G.R. No. 38423, November 25, 1982, 118 SCRA 695, 697.

[29] 27 Phil. 495, 498 (1914); see also US v. Ramos, 35 Phil. 671, 677 (1916).

[30] People v. Mirasol, 62 Phil. 120, 125 (1935).

justify his isolation from his family and the rest of civilized society."[31] "I regret that the Court can impose no more than reclusion perpetua. One who has dishonored his own flesh and blood does not deserve to live."[32]; and "There should be a special place in hell for child molesters for they are men who are dirty, despicable, deviant, and the dregs of society."[33] The danger that the indignation produced by the heinousness of the offense may sometimes sway the court into convicting the accused was acknowledged in *People v. Poblador* when the court said that "The lower court, in considering the version of the prosecution, failed to exhibit the requisite measure of objectivity and detachment. It could be that the natural sympathy for a woman claiming to have been the victim of a man's lustful desires and the abhorrence such an act provokes led him astray."[34]

This threat has time and again been used as the justification for the extreme caution and care that the trier of facts must take in order to preserve the constitutional presumption of innocence in favor of the accused. In fact, the three well-known principles in guiding an appellate court in reviewing the evidence presented in a rape case[35] have largely evolved therefrom. Such a course may be understandable, even necessary, in view of the fact that it is mandated by the constitution. However, it must not be forgotten that there is another party to the proceeding who may be unduly prejudiced. She is the complainant whose rights we shall next consider.

B. *Complainant's Right to Protection: Who's on Trial Here, Anyway?*

The Right. Although they may not rise to the constitutional level, the complainant in a prosecution of rape possesses certain rights which the state has an interest in preserving. As a witness, she has a right to be "protected from irrelevant, improper or insulting questions, and from harsh or insulting demeanor . . . and to be examined only as to matters pertinent to the issue."[36] As observed by Mr. Justice Torres in *People v. Belandrez*: "While it is true that it is the right of the accused, through counsel, to subject the prosecution witnesses to rigid questioning in order to bring forth the truth, yet the exercise of such right has its limitations. After her

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[31] People v. Albarico, G.R. No. 38339, October 10, 1980, 100 SCRA 280, 285.

[32] Mr. Justice Plana's separate opinion in People v. Franco, G.R. No. 40183, June 29, 1982, 114 SCRA 737, 742-743.

[33] Mr. Justice Abad Santos speaking for the court in People v. Malate, G.R. No. 40791, September 11, 1982, 116 SCRA 487, 489.

[34] G.R. No. 44129, April 29, 1977, 76 SCRA 634, 640.

[35] These principles are: 1. That an accusation for rape can be made with facility; it is difficult to prove it but more difficult for the person accused, though innocent, to disprove it; 2. That in view of the intrinsic nature of the crime of rape where only 2 persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; 3. Evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense. People v. Quintal, G.R. No. 49656, November 25, 1983, 125 SCRA 734, 749.

[36] RULES OF COURT, Rule 132, sec. 19.

ordeal..., the merciless manner in which the cross-examination of PV was conducted, when she was quizzed about the details of the criminal assault upon her and her subsequent reaction, as if she were expected to live over again her terrible experience, has the effect of adding insult to injury..."[37]

Especially where the offended parties are young and immature, Supreme Court decisions manifest a "marked receptivity on its part to lend credence to their version of what transpired... [for the reason that] the state, as *parens patriae,* is under the obligation to minimize the risk of harm to those who, because of their minority, are as yet unable to take care of themselves fully. Those of tender years deserve its utmost protection..."[38]

The Threat. Concern over convicting the innocent charged with rape may have a tendency to admit the most damaging evidence of the complainant's past sexual conduct, no matter how irrelevant it may be. This is not to say that all such evidence is immaterial and should therefore not be allowed. Of course such evidence may be material and even vital to the defense of the accused. It is the indiscriminate admission of such evidence which poses the threat not only to the complainant's right to protection as a witness but perhaps also a still undefined right to privacy.[39] What is more, the indiscriminate use and acceptance of such evidence tends to discourage the reporting and prosecution[40] of an already underreported crime, a result contrary to the state's interest in punishing criminals and maintaining the peace and good order of the community. It should be noted that even prostitutes may be victims of rape as chastity is not an essential requisite for the prosecution of rape. Besides, who is on trial here, anyway? The situation has been sarcastically described thus: "The charge of rape imposes a stricter burden of proof, a victim must not only prove the guilt of her perpetrator, but also her own innocence. In other words, the traditional presumption of innocence until guilt is proved does not extend to the rape victim. Rape is the one crime in which proof of guilt of the offender depends on proof of innocence of the victim."[41] Then again,

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[37] 85 Phil. 874, 878 (1950).

[38] *See* People v. Baylon, G.R. No. 35785, May 29, 1974, 57 SCRA 114, 120; People v. Molina, G.R. No. 30191, October 27, 1973, 53 SCRA 495; People v. Cawili, G.R. No. 30543, July 15, 1975, 65 SCRA 24; People v. Conchada, G.R. No. 39367-69, February 28, 1979, 88 SCRA 683.

[39] The U.S. Supreme Court stated in Griswold v. Connecticut, 381 U.S. 479 (1965) that "specific guarantees in the Bill of Rights have penumbras, formed by emanations from these guarantees that help give them life and substance." Would it not be possible to define a right to privacy in favor of the complainant in a rape charge as a penumbra formed by emanations from the due process clause of our constitution? If so, then an inquiry into complainant's past sexual history which is immaterial to the issue or which is designed merely to embarrass or humiliate her would be a violation of that privacy. *See Rape Reform, supra* note 15, at 962.

[40] Rape cannot be prosecuted de oficio (REV. PEN. CODE, Art. 344).

[41] *Marital Rape, supra* note 12, 601-02.

a limitation on its admissibility, if carried to the other extreme, may infringe upon the defendant's right to confront his witnesses and to a fair trial.

C. *Defendant's Right to Confrontation of Witnesses*

The Right. This constitutional right[42] includes the right to cross-examine the witnesses against him.[43]

The Threat. As already stated, a limitation upon the admissibility of such evidence may be carried to the other extreme such that the defendant may be deprived of an opportunity to present evidence which may be critical to his defense.

Having identified these competing interests, a consideration of some evidentiary concerns peculiar to rape and the manner in which the judiciary has treated this problem of striking a delicate balance between them is in order.

IV. EVIDENTIARY CONCERNS

A. *Past Sexual Conduct*

In the United States, few areas of the law have undergone such upheaval in recent years as the area governing sexual offenses. Legislators and courts had undertaken a reexamination of the traditional approaches to sexual crimes, at least in part as a consequence of a redefining of sexual mores and the changing status of women in society.[44] The so-called rediscovery of rape has coincided with the growth of the Women's Movement. Prominent feminist publications have authored or printed many of the relevant writings on the subject, organized conferences and 'speak-outs', established rape crisis centers, extended aids such as escort services, group counselling, and referrals to physicians, psychiatrists, and lawyers, and even lobbied for reforms in the law of rape.[45] Raising the cry of 'raped by the courts', feminists have charged that the victim's ordeal during the trial unjustly compounds the trauma of the event and its aftermath.[46]

The overall purpose of these reforms is to treat rape more like other offenses. The major motiff is that rape prosecution should concentrate on the defendant's conduct, inquiring into the actions of the complainant only when fairness so requires.[47] The policies underlying reform include encouraging the victim to report the crime, protecting the victim's privacy, preventing undue harrassment and humiliation, shifting the focus away from the victim's character to the commission of the crime, and barring evidence that may distract and inflame the jurors and which is of only arguable probative worth.[48]

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42 CONST. Art. IV, Sec. 19.
43 U.S. v. Javier, 37 Phil. 449, 451 (1918).
44 *Rape Reform, supra* note 15, at 955 *citing* Ireland, *Rape Reform Legislation: A New Standard of Sexual Responsibility*, 49 U. COLO. L. REV. 185, 185 (1978).
45 Berger, *supra* note 9, at 3.
46 *Id.* at 23.
47 *Id.* at 12.
48 *Id.* at 54.

Traditionally, such evidence has been admitted either to show that complainant consented to the sexual intercourse or to impeach her credibility. Lack of chastity was sometimes offered as part of the general attack upon the credibility of a victim presumably from the belief that the unchaste woman was more apt to lie,[49] that promiscuity imports dishonesty.[50] Wigmore assumed that unchaste women tend to make false and imaginary charges of sexual abuse and concluded that evidence of unchastity should be admissible to prove circumstantially the victim's bad character for truth and veracity.[51]

On the issue of consent, evidence of prior sexual conduct was admissible on the assumption that the woman who had consented once was more likely to do so again:[52] "And will you not more readily infer assent in the practised Messalina, in loose attire, than in the reserved and virtuous Lucretia?"[53]; "No impartial mind can resist the conclusion that a female who had been in the recent habit of illicit intercourse with others will not be so likely to resist as one who is spotless and pure."[54]

As abovestated, such traditional rules have come under attack in recent years. If modern sexual research is to be credited, the class of the unchaste includes a majority of American females.[55] Some have criticised the admissibility of character evidence of unchastity from which the fact-finder may infer consent (not from her specific pattern of behavior but in her membership in the class of women with a reputation for unchastity).[56] Evidence of reputation has also been attacked because "at best, this evidence proves what the community allegedly believes, not what the person is. At worst, such proof is vague and composed only of rumor and hearsay."[57] Thus, the United States Supreme Court has criticized rules allowing use of evidence of reputation to establish character as "illogical, unscientific, and anomalous, explainable only as archaic survivals of compurgation", opening a "veritable

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[49] *Rape Reform, supra* note 15 at 952 (citing court decisions).

[50] Berger, *supra* note 9, at 18 (citing court decisions).

[51] Ordover, *Admissibility of Patterns of Similar Sexual Conduct: The Unlamented Death of Character for Chastity*, 63 CORNELL L. REV. 90, 120 (1977), *citing* 1 WIGMORE § 62 and 3A WIGMORE § 924A.

The author also cited Camp v. State, 3 Ga. 417, 422 (1847): "No evil habitude of humanity so depraves the nature, so deadens the moral sense, and obliterates the distinctions between right and wrong, as common, licentious indulgence. Particularly is this true of women, the citadel whose character is virtue; when that is lost, all is gone; her love of justice, sense of character and regard for truth."

[52] *Rape Reform, supra* note 15, at 958; Student Notes, *Criminal Procedure — Right of Cross-Examination — Sexual Assault Statute*, 70 W. VA. L. REV., 293, 302 (1977); Rudstein, *Rape Shield Laws: Some Cosstitutional Problems*, 18 WM. & M. L REV. 1, 4 (1976).

[53] Berger, *supra* note 9, at 16 *citing* People v. Abbot, 19 Wend. 192, 195 (N.Y. 1838).

[54] *Id.* at 16 *citing* Lee v. State, 132 Tenn. 655, 658, 179 S.W. 145, 145, (1915).

[55] Ordover, *supra* note 51 at 105 *citing* Kinsey et al., SEXUAL BEHAVIOR IN THE HUMAN FEMALE (1953).

[56] *Id.* at 98.

[57] *Id.* at 104 *citing* Michelson v. U.S., 335 US 496, 477 (1948).

Pandora's box of irresponsible gossip, innuendo, and smear."[58] It is particularly unreliable when it relates to sexual matters as "sex lends itself to sensationalism and exaggeration .... since sexual activity is usually private, one's sexual reputation generally reflects little more than speculation.... Because people value privacy, it is unlikely that a woman who is rumored to be promiscuous will seek to correct the record by detailing the true facts of her sex life.... Providing the complainant with an opportunity to do so at trial fails to solve the problem. In effect, this puts the victim on trial, thus obscuring the ultimate issues, and inviting a verdict based on the juror's notions of morality."[59] Moreover, if evidence of a criminal defendant's general propensity to commit crime is uniformly inadmissible on grounds of prejudice, confusion, and lack of probative value, why should the rape victim be tried on similar general propensity evidence relating to her unchastity?[60]

The legislative response to these criticisms has been overwhelming. By the late seventies more than half the states had enacted 'rape shield' statutes designed to control or even prohibit the use of evidence respecting the complainant's chastity, ranging from highly restrictive to highly permissive.[61] In turn, those which are too restrictive have come under attack as being violative of the defendant's right to fair trial or his right to confrontation, or both.[62] It has been said that "those who endeavor to write these laws assume the delicate and taxing task of mediating strong and conflicting interests in such a way as to dignify the complainant's role without imperiling the person accused.[63]

Seven categories of evidence have been recommended which, subject to a court determination of relevance and probative worth, the defendant should be allowed to introduce:[64]

1. evidence of defendant's sexual conduct with complainant;

2. evidence of specific instance of sexual conduct tending to prove that a person other than defendant committed the act or acts charged or caused the complainant's physical condition allegedly arising from these acts, including proof of origin of semen, pregnancy, or disease;

3. evidence of patterns of sexual conduct so distinctive and so closely resembling the defendant's version of the alleged encounter with complainant as to tend to prove that she consented to the act or acts charged or behaved in such a manner as to lead the defendant reasonably to believe that she consented;

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58 *Id.* at 475.
59 *Id.* at 105 *citing* McLean v. U.S., 377 A. 2d 74 (D.C. 1977).
60 *Id.* at 108.
61 Berger, *supra* note 9, at 32.
62 Rudstein, *supra* note 52, at 45.
63 Berger, *supra* note 9, at 100.
64 *Rape Reform*, *supra* note 15, at 967.

4. evidence of prior sexual conduct, known to the defendant at the time of the acts charged, tending to prove that he reasonably believed that the complainant was consenting to these acts;

5. evidence of sexual conduct tending to prove that the complainant has a motive to fabricate the charge;

6. evidence tending to rebut proof by the prosecution regarding complainant's sexual conduct;

7. evidence of sexual conduct offered as the basis of expert psychological or psychiatric opinion that the complainant fantasized or invented the act or acts charged.

These categories are sufficiently broad to allow admissibility of the most probative evidence that defendant might seek to introduce but at the same time are narrow enough to foreclose indiscriminate and often prejudicial intrusion into the victim's past sexual conduct. Specific acts of conduct are more easily established or discredited, and consequently more reliable, than is evidence based upon opinion or reputation, which, in its extreme form, is not far removed from rumor and hearsay.[65]

In this jurisdiction, although women have for a long time been a protected specie, it cannot be denied that there is a like movement to gain greater societal respect for women in all fields under the banner of equality.[66] For one reason or another, attention has not been focused on the victims of rape. It could be that the unfortunate victims in this country are not subjected to as much trauma as their counterparts abroad. As will be discussed below, evidence of prior sexual conduct is not as used (or abused) as it is in the United States. This is what one gathers from reported Supreme Court decisions. However, as the state may not appeal from a judgment of acquittal,[67] this sample contains only cases where the trier of fact deemed the complaining witness credible despite some implied attacks on her character. The unappealed and therefore unreported acquittals may conceal examples of exactly the kind of evidence which rape shield statutes in the United States seek to exclude. Even if they do not, it should be noted that some of our rules of evidence are similar, if not exactly the same, as those which traditionally formed the basis of the admissibility of such evidence in the United States.[68] There is a possibility of these rules being relied on

[65] *Id.* at 967-68.

[66] Protected in the same class as "incompetents" unable to look after themselves and so better left at home.

[67] CONST., Art. IV, Sec. 22 reads in part: "No person shall be twice put in jeopardy of punishment for the same offense."

[68] RULES OF COURT, Rule 130, sec. 35: "Common reputation existing previous to the controversy, respecting moral character, may be given in evidence; RULES OF COURT, Rule 130, sec. 46: "The good moral character of the accused having reference to the moral trait involved in the offense charged, may be proved by him. Unless in rebuttal, the prosecution cannot prove the bad moral character of the accused. The good or bad moral character of the offended person may be proved if it may establish in any reasonable degree the probability of improbability of the offense charged."

here. True, there is no possibility of jury bias as we have never adopted the jury system but we must not overlook the possibility of such evidence affecting the judge and the guaranteed trauma, humiliation, and embarrassment it will bring to the complainant.[69]

Evidence of prior sexual conduct on the issue of consent most often relied on is limited to relations with the defendant himself.[70] The favorite scenario is that they were sweethearts and that they had been engaging in sexual intercourse even before the alleged rape. However, where no evidence of amorous relations is presented,[71] where the alleged lovers could have chosen a 'better' or more 'secret' place,[72] where an outcry was made,[73] where complainant promptly complained,[74] or where other such circumstances existed, the defense was held without merit. Moreover, allegations which picture the complainant as the 'aggressor' are not favored as can be seen from the following pronouncements:

> Even a woman of loose morals would not agree to allow two men to successively take advantage of her in the presence of the other.[75]
>
> It is unnatural for a 16 year old girl to have acted the way complainant had allegedly acted, namely: persuading appellant to separate from their group to go to Puntod to be able to have sexual intercourse; and after consummating the act, pulling down appellant 'for the purpose

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[69] The intimation by the court in *People v. Poblador* that the judge was probably swayed into convicting the accused by the heinousness of the crime can work the other way: he could be swayed into acquitting the accused by the unchaste character of the complainant.

[70] U.S. v. Tumbaga, 40 Phil. 701 (1920); People v. Licerio, 61 Phil. 361 (1935); People v. Gan, G.R. No. 33446, August 18, 1972, 46 SCRA 667; People v. Francisquite, G.R. No. 27980, April 30, 1974, 56 SCRA 764; People v. Reyes, G.R. No. 36874-76, September 30, 1974, 60 SCRA 126; People v. Albay, G.R. No. 37678, April 30, 1976, 70 SCRA 521; People v. Godoy, G.R. No. 31177, July 15, 1976, 72 SCRA 69; People v. Eguac, G.R. No. 36082, December 29, 1977, 80 SCRA 665; People v. Paragsa, G.R. No. 44060, July 20, 1978; 84 SCRA 105; People v. Lacuna, G.R. No. 38463, December 29, 1978, 87 SCRA 364, People v. Ramos, G.R. No. 47627, March 31, 1980, 96 SCRA 903; People v. Bardaje, G.R. No. 29271, August 29, 1980, 99 SCRA 388; People v. Aquiapas, G.R. No. 49910, November 28, 1980, 101 SCRA 412; People v. Roque, G.R. No. 53470, June 26, 1981, 105 SCRA 117; People v. Macatangay, G.R. No. 40726, June 29, 1982, 114 SCRA 743; People v. Manlabao, G.R. No. 43888, June 29, 1982, 114 SCRA 789; People v. Simbra, G.R. No. 39401, September 30, 1982, 117 SCRA 242; People v. Gasendo, G.R. No. 41052, September 30, 1982, 117 SCRA 280; People v. Sambili, G.R. No. September 30, 1982, 117 SCRA 312; People v. Lood, G.R. No. 52061, September 30, 1982, 117 SCRA 467; People v. Velasquez, G.R. No. 35241, February 28, 1983, 120 SCRA 847; People v. Camarce, G.R. No. 47806, March 25, 1983, 121 SCRA 174; People v. Paras, G.R. No. 57195, April 28, 1983, 121 SCRA 819; People v. Fernandez, G.R. No. 49601, August 30, 1983, 124 SCRA 319; People v. Ibanga, G.R. No. 39502, September 24, 1983, 124 SCRA 697; People v. Simbulan, G.R. No. 50476, September 30, 1983, 124 SCRA 927; People v. Oydoc, G.R. No. 61679, October 26, 1983, 125 SCRA 250; People v. Quintal, G.R. No. 49656, November 25, 1983, 125 SCRA 734; People v. Moredo, G.R. No. 34127, January 30, 1984, 127 SCRA 117.

[71] People v. Francisquite, G.R. No. 27980, April 30, 1974; People v. Oydoc, G.R. No. 61679, October 26, 1983.

[72] People v. Aquiapas, G.R. No. 49910, November 28, 1980; People v. Sambili, G.R. No. 44408, September 30, 1982.

[73] People v. Tumbaga, 40 Phil. 701 (1920).

[74] People v. Ramos, G.R. No. 47627, March 31, 1980.

[75] People v. Simbra, G.R. No. 39401, September 30, 1982, 117 SCRA 242, 247.

> of another round'. Besides, other than the foregoing self-serving testimony of appellant, no evidence whatsoever was presented to prove that the appellant was extraordinarily irresistible and/or that the complainant is a nymphet capable of the aggressive attribute imputed to her.[76]

> Appellant would want to create the impression that... he was such a giant of a lady killer who readily induced Elena to fall for him....[77]

In some cases, the fact that complainant and defendant had had illicit relations in the past were found immaterial:

> If such were indeed the case, still the defense that there was no force was not made out for the only question involved in this prosecution was whether on the night of March 9, 1970, he was guilty of raping complainant. In the light of the evidence on record, the conclusion that rape was committed was more than fully justified, the constitutional presumption of innocence not sufficient to call for exculpation even as reinforced by the assertion that previously such favors were enjoyed by him with the acquiescence, if not at the instigation, of complainant.[78]

> Admitting that appellant had been having illicit relations with the offended party for months before the time and place mentioned in the complaint, yet, nonetheless, that fact would not constitute a defense, provided the illicit relations, which are described in the complaint, took place by force and violence and against the will of the offended party.[79]

On the other hand:

> The circumstance that V admitted that she and G embraced and kissed each other in a hotel room long before the alleged rape, that she did not tenaciously resist the alleged ravishment, that there were no external injuries on her body to show that actual physical violence was used against her, that she did not shout, that she did not run or escape, that she continued to have sexual intercourse with G in the house where his wife was staying and that she did not want to leave that house when her father fetched her, point to the conclusion that their sexual intercourse was induced by the chemistry and electricity of mutual attraction and desire.[80]

> Nor is there need to salve the judicial conscience, as the complainant in this case, from the evidence on record is not a young lady clad in the armor of innocence regrettably pierced, but one experienced in the ways of life. Moreover, there is more than just an inkling that what did transpire could be ascribed to the permissive character of the times, the alleged victim manifesting a response that satisfied the hunger of

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[76] People v. Gasendo, G.R. No. 41052, September 30, 1982, 117 SCRA 280, 289.

[77] People v. Paras, G.R. No. 57195, April 28, 1983; *see also* People v. Licerio, 61 Phil. 361 (1955) and People v. Gan, G.R. No. 33446, August 18, 1972. *But see* People v. Ramirez, G.R. No. 39007, August 21, 1982, 116 SCRA 48, 53 (The woman's aggressive behavior, as alleged by defendant, was given credence; the fact that she was 50 years old and he was 22 years old made it "hard to believe that a man of his age and who is single would fall for a woman who could be his mother and already living with a common law husband... more likely that it was complainant who fell in love with appellant.").

[78] People v. Eguac, G.R. No. 36082, December 29, 1977, 80 SCRA 605, 673.

[79] People v. Blance, 45 Phil. 113, 116 (1923).

[80] People v. Mendiquarin, G.R. No. 49616, August 20, 1979, 92 SCRA 679.

> the lions thus sparing the accused from any frustration arising from baffled lust.[81]

Evidence of the complainant's unchaste character has also been relied upon by the defense.[82] However, it has been held that: "The fact that MB may have been an unchaste character constitutes no defense to the charge of rape, providing it is proved that the illicit relations described in the complaint were committed with force and violence. The appellant is equally guilty, under the law, if force and violence were used, regardless of the good or bad morals of MB."[83] The fact that both mother and daughter-complainant were having illicit relations which the father-defendant disapproved of was held insufficient motive in the charge of rape.[84] On the defense that the complainant agreed to a 'striptease-act-for-a-fee', it was held unbelievable that "any woman exists, even one habitually engaged in this kind of entertainment . . . who would consent . . . to do a performance, not even for all the money in the world after the rough handling she experienced from these wolves in men's clothing who hungered for a show. There is no fury to match a woman stirred to indignation. . . ."[85] On the defense that complainant initiated the physical contact between them, the court said, "Since they had just met at the party and were perfect strangers before that, it is not possible to believe his story because the Filipino woman is shy and reserved by nature which makes her a difficult prey for the predatory male."[86] In one case, counsel was admonished for having the "temerity to impute unchaste character on the complainant without any basis in evidence."[87] In another, the allegation that complainant was a prostitute was not assessed by the court in view of the fact that the other evidence had not proved defendant's guilt beyond reasonable doubt.[88]

In *People v. Pimentel,*[89] it was said that in weighing the testimony of complainant, the rule often applied is that "the testimony of the victim, where her chastity has not been questioned, is generally accorded credence because such offended party would not have fabricated facts that could bring shame and dishonor on her." The general rule, therefore, is that rape victims are credible witnesses. However, this pronouncement and others of similar import seem to imply that evidence of complainant's unchaste char-

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[81] People v. Reyes, G.R. No. 36874-76, September 30, 1974, 60 SCRA 126, 131-32.

[82] People v. Blance, 45 Phil. 113 (1923); People v. Lomibao, 55 Phil. 616 (1931); People v. Jose G.R. No. 28232, February 6, 1971, 37 SCRA 450; People v. Cueto, G.R. No. 46697, August 25, 1978, 84 SCRA 774; People v. Ramirez, G.R. No. 39017, August 21, 1982; 116 SCRA 48; People v. Imbo, G.R. No. 36759, August 31, 1982, 116 SCRA 355; People v. Akbari, G.R. No. 61686, March 12, 1984, 128 SCRA 163; People v. Ludovice, G.R. No. 34986, March 23, 1984, 128 SCRA 361.

[83] People v. Blance, 45 Phil. 113 (1923); People v. Lomibao, 55 Phil. 616 (1931); People v. Akbari, G.R. No. 61686, March 12, 1984.

[84] People v. Clarin, G.R. No. 47200, October 30, 1981. 108 SCRA 680.

[85] People v. Jose, G.R. No. 28232, February 6, 1971. 37 SCRA 450, 466.

[86] People v. Ludovice, G.R. No. 34986, March 23, 1984, 128 SCRA 361, 371.

[87] People v. Imbo, G.R. No. 36759, August 31, 1982, 116 SCRA 355, 361.

[88] People v. Cueto, G.R. No. 46697, August 25, 1978.

[89] G.R. No. 38423, November 25, 1982, 118 SCRA 695.

acter is admissible to impeach her testimony — that a woman's chastity is an indicator of her veracity. Note that the use of evidence of complainant's unchaste character for this purpose is one of those traditional uses which have come under attack.

B. *Corroboration*

The requirement that testimony of a rape victim be corroborated, either by testimony of other witnesses or by circumstantial evidence, used to be the law in a large number of states in the United States. Justifications for this rule were: a presumed frequency of false rape charges, a sympathy on the part of the jury that might cause it to accept the victim's testimony uncritically, and the difficulty of disproving the rape charge.[90] In answer to these justifications, it is said that the danger of fabrication is counterbalanced by the existence of strong social deterrents to reporting rapes, such as: the stigma which attaches to the victim of such a crime, the humiliating publicity, the harsh treatment by police and doctors, and the necessity of facing the insinuations of defense counsel.[91] On jury acceptance, empirical evidence reveals that juries are more skeptical of rape accusations than is often supposed and they seldom return rape convictions in the absence of aggravating circumstances such as the use of force or violence.[92] Moreover, on the contention that it is difficult to defend, it is said that the defendant is unlikely to be convicted on the uncorroborated testimony of complainant even in those jurisdictions which do not require corroboration[93] and that the severe penalties and admissibility of complainant's past sexual conduct have skewed the odds in favor of the defendant.[94] They conclude that there seems to be no reason why the traditional standards of proof beyond reasonable doubt will not provide adequate protection for the accused. He should not be entitled to special treatment denied other defendants and the rape victim should not be subjected to a demeaning presumption against her truthfulness. If she is credible, her testimony alone should sustain a conviction.[95] This criticism has, in fact, been heeded and a majority of the states have rejected the requirement.[96]

In the Philippines, the rule is that testimony of witnesses other than the complainant is not required. However, when such evidence is available, the Court has stated:

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[90] BAILEY AND ROTHBLATT, CRIMES OF VIOLENCE: RAPE AND OTHER SEX CRIMES (1973).

[91] *Criminal Law—Rape—Sufficiency of Evidence to Support Conviction—Corroboration of Complainant's Testimony*, 15 DUQ. L. REV. 305, 312 (1976-77) *citing* Comment, *Rape and Rape Laws: Sexism in Society and Law*, 61 CAL. L. REV. 919, 921 (1973) (hereinafter cited as *Criminal Law*); *Rape Reform, supra* note 15, at 971 *citing Note, The Rape Corroboration Requirement: Repeal not Reform*, 81 YALE L.J. 1365, 1373-84 (1972).

[92] *Criminal Law, supra* note 91, at 312 *citing* H. KALVEN, JR. & H. ZEISEL, THE AMERICAN JURY, 249-54 (1966).

[93] *Id.* at 312.

[94] *Rape Reform, supra* note 15, at 971.

[95] *Criminal Law, supra* note 91, at 312-13.

[96] *Id.* at 313.

> The book disclosed too many instances of false charges of rape.... On the other hand, the only evidence on which convictions of these heinous offenses can be had is frequently the uncorroborated testimony of the injured woman, and when corroboration is available, it is usually limited to the testimony of intimate friends and relations who have been attracted to the scene of the crime by cries of the victim. It becomes necessary, therefore, for the courts to exercise the most painstaking care in scrutinizing the testimony of the witnesses for the prosecution. The witnesses are usually women who are not able to give a clear and correct account of the commission of the crime, and not every petty discrepancy or inconsistency in their statements will justify the rejection of their testimony. In such cases the timidity and ignorance of the witnesses must be taken into consideration, or the perpetuation of these heinous offenses will in most instances go unpunished. On the other hand, convictions cannot and should not be sustained when it appears that these witnesses had willfully and knowingly testified falsely as to any matter developed at the trial..., and unless their testimony rings true at every point, and is clear, definite and convincing throughout, it should be rejected.[97]

The lone testimony of the complainant may therefore serve as basis for conviction so long as it is credible: "When a woman testifies that she has been raped she says, in effect, that all that is necessary to constitute the commission of this crime has been committed. It is merely a question, then, whether or not this court accepts her statement."[98] "And while we have frequently held that the uncorroborated testimony of the offended party in cases of this kind may be sufficient under certain circumstances to warrant conviction, yet from the very nature of the charge and the ease with which it may be made and the difficulty which surrounds the accused in disproving it where the point at issue is as to whether the cohabitation was with or without the use of force or threats, it is imperative that such testimony should be scrutinized with the greatest caution;"[99] "should not be received with precipitate credulity, and when the conviction depends at any vital point upon her uncorroborated testimony, it should not be accepted unless her sincerity and candor are free from suspicion."[100]

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[97] United States v. Ramos, 35 Phil. 671, 677-78 (1916).

[98] United States v. Ramos, 1 Phil. 81 (1901); People v. Selfaison, G.R. No. 14732, January 28, 1961, 1 SCRA 235; People v. Royeras, G.R. No. 31886, April 29, 1974, 56 SCRA 666; People v. Sarile, G.R. No. 37148, June 30, 1976, 71 SCRA 593; People v. Alemon, G.R. No. 39776, February 20, 1981, 102 SCRA 765; People v. Lat, G.R. No. 50086, August 21, 1980, 99 SCRA 297. *But see* United States v. Dela Paz, 9 Phil. 738 (1907) and United States v. Magsisi, 9 Phil. 739 (1907) (the court held that there was too much doubt of guilt to justify a conviction in these cases where the only evidence presented by the prosecution was the complainant's testimony).

[99] United States v. Flores, 26 Phil. 262, 268 (1913).

[100] People v. Estacio, G.R. No. 54221, January 30, 1982, 111 SCRA 537, 550; *see also* U.S. v. Flores, 6 Phil. 420 (1906); People v. Dazo, 58 Phil. 420 (1933); People v. Nebres, 58 Phil. 903 (1933); People v. Ariarte, 60 Phil. 326 (1934); People v. Delfinado, 61 Phil. 694 (1935); People v. Flores, G.R. No. 17077, April 29, 1968, 23 SCRA 309; People v. Arciaga, G.R. No. 38179, June 16, 1980, 98 SCRA 1; People v. Ramirez, G.R. No. 39007, August 21, 1982, 116 SCRA 48; People v. Peralta, G.R. No. 61870, November 5, 1982, 118 SCRA 203; People v. Velasquez, G.R. No. 35241, February 28, 1983, 120 SCRA 847; People v. Galicia, G.R. No. 39235, July 25, 1983.

Additionally, circumstantial evidence must be presented to support the complainant's claim: "While it is to be admitted that conviction may rest on the testimony of a single witness, especially in a case of rape which is seldom committed in the presence of third parties, still the testimony of a victim of rape must be corroborated by the physical facts, such as fingergrips or contusions on her throat, face, body, arms and thighs, as well as torn garments, particularly the panties worn by the victim, to prove force and violence."[101]

Indeed, "physical evidence is evidence of the highest order. It speaks more eloquently than a hundred witnesses put together."[102] Although the medical findings would constitute "mute but eloquent proof of the ordeal to which she was subjected"[103] and would have "a decisive value on the question of whether she was [rape],"[104] it is not an indispensable element especially where there is sufficient evidence establishing the guilt of the accused.[105] It may still be of value although the examination is conducted belatedly when such delay can be reasonably explained.[106] Similarly, the non-presentation of complainant's panty or torn garments is not fatal to the prosecution's case where there is other evidence sufficiently proving defendant's guilt.[107]

C. *Prompt Complaint, Outcries, Subsequent Conduct*

The requirement of prompt complaint has as its source the common law notion of "hue and cry" — when a woman has been assaulted against her will, it is natural that she "cry out." Some states in the United States formerly provided that prosecution would be barred unless notice was given to public authorities within a specified number of months.[108] While prompt complaint is no longer a material element of a rape charge, it continues to be competent evidence in a limited manner.[109]

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[101] People v. Lopez, G.R. No. 41974, November 29, 1976, 74 SCRA 205, 209 and People v. dela Cruz, G.R. No. 35664, May 19, 1983, 122 SCRA 375; *see* U.S. v. Mamintud, 6 Phil. 374 (1906) (the only evidence presented was the evidence of the complainant and fiscal was admonished for "torturing the minds of the members of the court by placing them in the trying position of running the risk of convicting an innocent man or acquitting a criminal").

[102] People v. Sacabin, G.R. No. 36638, June 28, 1974, 57 SCRA 707, 713; People v. Bardaje, G.R. No. 29271, August 29, 1980, 99 SCRA 388, 399; People v. Jervoso, G.R. No. 36530, September 29, 1983, 124 SCRA 765.

[103] People v. Andal, G.R. No. 39763, March 8, 1976, 70 SCRA 30, 35-36.

[104] People v. Tamayao, G.R. No. 56699, January 28, 1983, 120 SCRA 412, 420.

[105] People v. Luneta, 79 Phil. 815 (1948); People v. Belandrez, 85 Phil. 874 (1950); People v. Orteza, G.R. No. 16033, September 29, 1962, 6 SCRA 109; People v. Opena, G.R. No. 34954, February 20, 1981, 102 SCRA 755; People v. Pasco, G.R. No. 41909, February 14, 1983, 120 SCRA 596.

[106] People v. Alqueza, 51 Phil. 817, 819 (1928) (where the medical examination was conducted 38 days after the alleged rape; the court held that this was "due, no doubt, to the lack of knowledge of its necessity").

[107] People v. Luneta, 79 Phil. 815 (1948); People v. Opena, G.R. No. 34954, February 20, 1981; People v. Mendoza, G.R. No. 50882, January 30. 1982, 111 SCRA 467; People v. Pon-an, G.R. No. 45436, September 30, 1982, 117 SCRA 334; People v. Balane, G.R. No. 48319-20, July 25, 1983, 123 SCRA 614.

[108] *Rape Reform, supra* note 15 at 968.

[109] *Id.* at 969.

So also in the Philippines, suspicion is aroused when the complainant fails to denounce her assailant at once.[110] However, this is not a hard and fast rule and so long as complainant is able to explain such delay to the satisfaction of the court, delay is excused. For instance, "one should not expect a thirteen year old girl to act like an adult or a mature and experienced woman who would have the courage and intelligence to disregard a threat on her life and the members of her family and complain immediately.... The reported cases on rape contain instances of young girls concealing for some time the assaults on their virtue because of the rapist's threat on their lives."[111] Other reasonable explanations were shame and fear,[112] fear of exacerbating her husband's hypertension[113] or the fear that he may take the law into his own hands,[114] need for a family consensus before a family dishonor can be made publicly considering the close family ties among Filipinos,[115] and the fact that they were terrorized by offenders who were members of the police force of the town[116] or armed men.[117] Moreover, "silence ... does not perforce warrant the conclusion that she was not sexually molested and that the charges are baseless.... Other relevant facts must likewise be considered to determine veracity.... It is not unusual for a rape victim to prefer to suffer in silence and keep to herself the shocking and embarrassing experience."[118]

As to the conduct required of her: "[T]he conduct of the woman immediately following the alleged assault is of the utmost importance as tending to establish the truth or falsity of the charge. Indeed it may well be doubted whether a conviction ... should ever be sustained upon the uncorroborated testimony of the woman unless the court is satisfied beyond reasonable doubt that her conduct at the time the alleged rape was committed and immediately thereafter was such as might reasonably be expected

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110 People v. Castro, G.R. No. 33175, August 19, 1974. 58 SCRA 473; People v. Ramirez, G.R. No. 30635, January 29, 1976, 69 SCRA 144; People v. Romero, Jr., G.R. No. 43805, October 23, 1982, 117 SCRA 897; People v. Pasco, G.R. No. 41909, February 14, 1983, 120 SCRA 596; People v. Jervoso, G.R. No. 46530, September 29, 1983, 124 SCRA 765; People v. Flores, G.R. No. 60665, October 26, 1983, 125 SCRA 244; People v. Torio, G.R. No. 48731, December 21, 1983, 126 SCRA 265; prompt complaint was made in the following cases: U.S. v. Huertas, 39 Phil. 440 (1918) (a few moments afterwards); People v. Taño, 109 Phil. 912 (1960) (the following day); People v. Copro, G.R. No. 37599, December 29, 1983, 126 SCRA 403 (upon release).

111 People v. Tampus, G.R. No. 42608, February 6, 1979, 88 SCRA 217, 222; People v. Roll, G.R. No. 42963, July 20, 1982, 115 SCRA 270; People v. Tamayao, G.R. No. 56699, January 28, 1983, 120 SCRA 412; People v. Paras, G.R. No. 38119, August 30, 1983, 124 SCRA 286; People v. Oydoc, G.R. No. 61679, October 26, 1983, 125 SCRA 250; People v. Alcantara, G.R. No. 49693-94, December 29, 1983, 126 SCRA 425; People v. Castillo, G.R. No. 11793, May 19, 1961, 2 SCRA 1.

112 People v. Felipe, G.R. No. 40432, July 19, 1982, 115 SCRA 88.

113 People v. Perello, Jr., G.R. No. 33064, January 27, 1982, 111 SCRA 147, 152.

114 U.S. v. Yamballa, 39 Phil. 640, 641 (1919).

115 People v. Marzan, G.R. No. 63265, March 13, 1984, 128 SCRA 203, 215.

116 People v. Belandrez, 85 Phil. 974 (1950).

117 People v. Aleman, G.R. No. 39776, February 20, 1981, 102 SCRA 765.

118 People v. Garcia, G.R. No. 45280-81, June 11, 1981, 105 SCRA 6, 26; *see also* U.S. v. Ilao, 11 Phil. 653 (1908) (evidence was found sufficient to prove defendant's guilt in spite of the absence of prompt complaint).

from her under all the circumstances of the case."[119] Besides, it has been said that "a woman's most precious asset is the purity of her womanhood. She will resist to the last ounce of her strength any attempt to defile it. In the face of superior force or imminent threat to her life she will succumb and submit. But, once the force or threat is lifted, she will not lose time in seeking justice and retribution."[120]

Intercourse with her husband two hours after the alleged rape,[121] testimony of the examining physician that he did not observe any depressed attitude or unusual agitation or disturbance on her part,[122] and assisting her sister in dividing the palay right after the alleged rape[123] have been held to constitute subsequent conduct unbecoming of a rape victim.

In one case, the Court held that "[h]er not offering resistance to appellant's imposition, that she should go with him after her violation, was a ruse resorted to in order to escape from further harm and enabled her later to go directly to the police authorities to report and charge the proper author of the criminal act. Complainant's conduct indicates an admirable presence of mind that bespeaks well of her character and intelligence."[124]

D. *Implausibility Rule*

> Evidence to be believed, must not only proceed from the mouth of a credible witness but it must be credible in itself such as the common experience and observation of mankind can approve as probable under the circumstances. We have no test of the truth of human testimony, except its conformity to our knowledge, observation and experience. Whatever is repugnant to these belongs to the miraculous and is outside of juridical cognizance.[125]
>
> Considering the severity of the penalty in prosecutions for rape and the difficulty attending the ascertainment of facts as they did occur, the judiciary being left to choose between what unusually are conflicting versions from the only two parties who could truthfully testify on the matter, it is imperative that the utmost caution be shown. Nowhere is the oft-quoted aphorism of Chancellor Van Fleet to the effect that evidence to be believed must not only proceed from the mouth of the credible witness but it must be credible in itself, in conformity with the common experience and observation of mankind, of more relevance than in cases of this character.[126]

In line with the requirement that the story told by complainant be inherently credible, it has been held inconceivable and contrary to human experience and conduct that rape would be committed in a place which is so close to other houses, in broad daylight, and in practically the presence

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[119] U.S. v. Flores, 26 Phil. 262, 268-269 (1913).
[120] People v. Tapao, G.R. No. 41704, October 23, 1981, 108 SCRA 351, 356.
[121] People v. Estacio, G.R. No. 54221, January 30, 1982, 111 SCRA 537.
[122] People v. Bernat, G.R. No. 45946, July 5, 1983, 123 SCRA 290.
[123] People v. Estacio, 18 Phil. 432 (1911).
[124] People v. Pastores, G.R. No. 29800, August 31, 1971, 40 SCRA 498, 511.
[125] People v. Dayag, G.R. No. 30619, March 29, 1964, 56 SCRA 439, 449-450.
[126] People v. Alvarez, G.R. No. 34644, January 17, 1974, 55 SCRA 81, 89.

of other people.[127] Again, this is not a hard and fast rule. As observed in a 1915 case: "This is one of the cases not infrequently seen in this jurisdiction where substantially every circumstance which ordinarily operates to deter a man from the commission of such an offense is found present and, at the same time, the overwhelming weight of direct evidence supports the finding that the crime was actually committed.[128] Also, "the mere apparent improbability that the alleged crime could have been committed in the manner and form described by the witnesses for the prosecution does not necessarily justify an acquittal if the evidence submitted by the prosecution is otherwise clear, satisfactory, and convincing, unless the degree of improbability is such as to amount to a practical impossibility.[129]

In applying this implausibility rule, the court has held:

> Viewed from human observation and experience, not even a confirmed sex maniac would dare do this thing before the eyes of strangers, how much more for a healthy husband before the eyes of his very wife.[130]
>
> The carnal acts, as depicted by the victim, while not impossible of being performed can only be achieved by complete submission of the woman and cooperation of both in the process. The portrayal is not only impossible under the circumstances but also bizarre.[131]
>
> Knowing the Filipino mind and temper, can it be believed that a Filipino male who, as appellant later proved himself, had sincerely wished and had taken overt steps to marry complainant, would make love with his future bride in the presence of two other male persons? He would not have been able to live the ignominy throughout his life, of having been a spectacle to two of his friends. And the marriage would be doomed from the start. The couple would be a laughing stock during their earthly days to their friends and persons who may come to know of their first intimate contact. Can such be credibly accepted in the light of the Filipino male's traditional jealousy for his future spouse to the utter exclusion of all the rest, even from stolen glances?[132]
>
> It is quite abnormal and unnatural, almost unheard of in human experience and behavior, that a man would have sexual intercourse with a woman then having her menstrual period, as was admitted condition of the complainant when she was allegedly abused by defendant and because of this universal abhorrence, taboo, and distate to have sexual contact with a menstruating female and this is to however passionate and lustful the man may be unless he is depraved or demented. We cannot believe that defendant, a young fourth year college student of civil engineering in Baguio City, would break or violate such a taboo by drugging the com-

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127 Fedelino v. Legarda, 4 Phil. 285 (1905); U.S. v. Cruz, 18 Phil. 543 (1911); U.S. v. Estacio, 18 Phil. 432 (1911); U.S. v. Mendez, 19 Phil. 28 (1911); People v. Andino, G.R. No. 36400, April 15, 1982, 113 SCRA 531.

128 U.S. v. Claro, 32 Phil. 413, 414 (1915); *see also* People v. Alqueza, 51 Phil. 817, (1928) (defendant's sickly wife was in the kitchen 6 meters away); People v. Opena, G.R. No. 34954, February 20, 1981, 102 SCRA 755 (rape of defendant's stepdaughter occurred in a small space occupied by 7 sleeping children and the child's mother) (in both cases, defendants were convicted).

129 U.S. v. Ramos, 35 Phil. 671, 678 (1916), *see also* People v. del Prado, 58 Phil. 637 (1933).

130 People v. Alvarez, G.R. No. 64644, January 17, 1974, 55 SCRA 81, 89.

131 People v. Cabatlao, G.R. No. 42149, October 23, 1981, 108 SCRA 359, 366.

132 People v. dela Cruz, G.R. No. 35664, May 19, 1983, 122 SCRA 375, 400.

> plainant with the help of his sister and afterwards have sexual relations with her in her menstrual condition.[133]

As to the credibility of the witnesses themselves, the findings of the trial court are, as a general rule, respected by the appellate courts: "There is, of course, a sharp conflict between the testimony of the accused and that of the complainant and her companion. Under such circumstances we will not interfere with the conclusion of the court concerning the credibility of the witnesses, the court having seen them in the act of testifying and having an opportunity to observe their manner and demeanor as witnesses, unless the record discloses that some fact or circumstance of weight or influence has been overlooked by the courts or its significance misunderstood or fact or circumstance misapplied."[134]

The Court has also held that:

> It is hard to believe that a young unmarried girl[135] / a married woman of good reputation in the community and the wife of a man of moderate means[136] / a young woman and a college student at that[713] / a young barrio lass, innocent, unsophisticated, a virgin, and studying in a religious school[138] / a young provinciana, barely fifteen, uncouth and unlettered, a mere household helper and engaged in the selling of breads and cakes ... belonged to the poor and was one of them and was still possessed of the traditional and proverbial modesty of the Filipina[139] / unmarried woman, public school teacher[140] / two old women, one sixty-five years old and the daughter forty-one years old[141] / fourteen year old mentally retarded girl, still in grade three[142] / guiless teenager, whose intelligence quotient is admittedly low[143] / woman from the barrio, married & with children[144] / decent girl[145] / artless and guiless barrio girl[145] / young Fili-

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[133] People v. Leones, G.R. No. 48727, September 30, 1982, 117 SCRA 382, 390; *see also* People v. Flores, G.R. No. 17077, April 29, 1968, 23 SCRA 309; U.S. v. Samonte, 20 Phil. 157 (1911); People v. Mirasol, 62 Phil. 120 (1935).

[134] U.S. v. Claro, 32 Phil. 413, 421 (1915) (The crying of the complainant while testifying was considered evidence in favor of her credibility).

[135] People v. Canastre, 82 Phil. 480 (1948); People v. Selfaison, G.R. No. 14732, January 28, 1961, 1 SCRA 235; People v. Carandang, G.R. No. 31012, August 15, 1973, 52 SCRA 259; People v. Savellano, G.R. No. 31227, May 31, 1974, 57 SCRA 320; People v. Cawili, G.R. No. 30543, July 15, 1975, 65 SCRA 24; People v. Arias, G.R. No. 40531, January 27, 1981, 102 SCRA 303, People v. Fernandez, G.R. No. 49601, August 30, 1983, 124 SCRA 319.

[136] People v. Castillo, G.R. No. 11793, May 19, 1961, 2 SCRA 1.

[137] People v. Pastores, G.R. No. 29800, August 31, 1971. 40 SCRA 498.

[138] People v. Gan, G.R. No. 33446, August 18, 1972, 46 SCRA 667; People v. Tampus, G.R. No. 42608, February 6, 1979, 88 SCRA 217; People v. Porcare, G.R. No. 37235, February 5, 1983, 120 SCRA 546.

[139] People v. Sacabin, G.R. No. 36638, June 28, 1974, 57 SCRA 707; People v. Oydoc, G.R. No. 61679, October 26, 1983. 125 SCRA 250.

[140] People v. Gargoles, G.R. No. 40885, May 18, 1978, 83 SCRA 282; People v. Gamez, G.R. No. 36428-29, August 30, 1983, 124 SCRA 260.

[141] People v. Ararao, G.R. No. 35354, April 5, 1982, 113 SCRA 410.

[142] People v. Roll, G.R. No. 42963, July 20, 1982, 115 SCRA 271.

[143] People v. Olmedillo, G.R. No. 42660, August 30, 1982, 116 SCRA 193.

[144] People v. Ganado, G.R. No. 37935, August 31, 1982, 116 SCRA 362.

[145] People v. Maala, G.R. No. 37792, June 24, 1983, 122 SCRA 812.

[146] People v. Balane, G.R. No. 48319-20, July 25, 1983, 123 SCRA 614.

> pina of decent repute[147] / woman four months pregnant at the time[148] / in awkward stage of puberty[149] / . . . would cast aside her modesty / would tell a story of defloration thereby foreclosing the probability of a happy married life, submit herself to an examination of her private parts, expose herself to the ordeal and embarrassment of public trial, allow her honor and reputation to be sullied, and heave upon herself untold humiliation if she were not motivated by an honest desire to have the culprits apprehended and punished.

"This is by no means a 'hackneyed postulate'... it is a truism."[150] This has been credited to "their natural instinct to protect their honor"[151] and the extreme modesty and timidity of the Filipina woman which makes her a difficult prey for the predatory male.[152] Besides, "shameless effrontery and cynicism alone cannot make a girl face without a blush the ordeal of publicity in making a narration of rape and we have not been shown that the offended party is a shameless woman or anything of the kind"[153] or that she had the "making of a scheming shrew."[154]

Again, these pronouncements reflect a positive attitude towards the rape victim without, however, placing the rights of the accused in jeopardy because this is not a hard and fast rule: "Of course, no woman in her right senses would concoct such a tale so repugnant to her virtue, and undergo the rigors of a public trial concerning her very honor, but this is no guaranty that all self-inflicted indignities are for the sake of truth."[155] Such would be the case, for instance, when there would be a motive weighty enough to make the woman fabricate the charge.[156]

Even more radically it has been said that the "contention would be true a generation ago but not anymore these days when teenagers are sex conscious, outgoing, frank and aggressive."[157]

E. *Motive*

"Where there is no evidence and nothing to indicate that principal witnesses for the prosecution were actuated by improper motives, the presumption is that they were not and their testimonies are entitled to full faith

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147 People v. Gamez, G.R. No. 36428-29, August 30, 1983, 124 SCRA 260; People v. Sambangan, G.R. No. 44412, November 25, 1983, 125 SCRA 726.

148 People v. Grefiel, G.R. No. 60706, October 15, 1983, 125 SCRA 102.

149 People v. Torres, G.R. No. 44429, October 26, 1983, 125 SCRA 199.

150 People v. Fernandez, G.R. No. 49601, August 30, 1983, 124 SCRA 319, 329.

151 People v. Taño, 109 Phil. 912, 914 (1960).

152 People v. Manzano, G.R. No. 38449, November 25, 1982, 118 SCRA 705; People v. Senon, Jr., G.R. No. 36606, March 25, 1983, 121 SCRA 141; People v. Ludovice, G.R. No. 34986, March 23, 1984, 128 SCRA 3 61.

153 People v. Brocal, 36 O.G. 858, 860 as cited in People v. Salazar, G.R. No. 37791, October 30, 1979, 93 SCRA 796, 805.

154 People v. Muñoz, G.R. No. 45517, December 19, 1980, 101 SCRA 704, 712 (the general rule was applied to a hostess of a nightclub).

155 People v. Flores, G.R. No. 17077, April 29, 1968, 23 SCRA 309, 326.

156 *See infra* notes 158-161.

157 People v. Flores, G.R. No. 60665, October 26, 1983, 125 SCRA 244, 248-249.

and credit."[158] But where the quantum of proof required to sustain a conviction has not been met, the fact that there is no apparent motive to testify falsely is immaterial.[159] Such motive to be accepted by the courts, must be "weighty enough to make her bear with equanimity the pillory to which she would be subject"[160] such as her desire to cover up her illicit relations with defendant even after they had been caught in the act.[161]

IV. CONCLUSION

With an observation limited to Supreme Court decisions it cannot be said that the judiciary has been unfair to either party in the disposition of rape cases. Its evidentiary rules are flexible in the sense that a failure of one will not be fatal to the case so long as such failure is reasonably explained or there are other circumstances which have been presented to prove the commission of the offense. Furthermore, although there exists a tendency even in this jurisdiction to focus attention on the complainant rather than on the accused himself, it cannot be said that the introduction of evidence of prior sexual conduct has been abused. With all the constitutional safeguards afforded the accused,[162] it is doubted whether there exists a need to place an additional burden of proof on complainant. A good guide in the consideration of such cases has, in the writer's opinion, been set forth thus: "The tenor of this opinion is not to be misinterpreted. It goes no further than to accept the plea of the Solicitor General . . . that accused is entitled to acquittal, his guilt not having been shown beyond reasonable doubt . . . the motive that led the Bs to testify falsely is immaterial. It suffices to state that what they said could not be given credence. . . . It could be that there are puzzles still unresolved. That may very well be, but for the disposition of this appeal, the inquiry is necessarily limited to the quantum of proof that must exist. That is all that is relevant to the decision reached."[163]

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158 People v. Zurbito, G.R. No. 35950. July 30, 1982, 115 SCRA 677, 687, cited in People v. Alcantara, G.R. No. 49693-94, December 29, 1983, 126 SCRA 425, 436; *see also* People v. Bawit, G.R. No. February 20, 1981; 102 SCRA 797; People v. Terrobias, G.R. No. 48944, February 26, 1981; 103 SCRA 321; People v. Boado, G.R. No. 44725, March 31, 1981, 103 SCRA 607; People v. Famador, G.R. No. 36553, March 30, 1982, 113 SCRA 310; People v. Palapal, G.R. No. 42646, June 29, 1982, 114 SCRA 783; People v. Roll, G.R. No. 42963, July 20, 1982, 115 SCRA 271; People v. Sambili, G.R. No. 44408, September 30, 1982, 117 SCRA 312.

159 People v. Poblador, G.R. No. 44129, April 29, 1977, 76 SCRA 634.

160 People v. Carandang, G.R. No. 31012, August 15, 1973, 52 SCRA 259.

161 People v. Delfinado, 61 Phil. 694 (1935); People v. Bardaje, G.R. No. 29271, August 29, 1980, 99 SCRA 388; People v. Pimentel, G.R. No. 38423, November 25, 1982, 118 SCRA 695.

162 CONST., Art. IV, secs. 16-22.

163 People v. Poblador, G.R. No. 44129, April 29, 1977, 76 SCRA 634.