

THE RULE ON VIOLENCE AGAINST WOMEN AND THEIR CHILDREN*

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The law on violence against women and their children can be best understood by studying its history and social context.

History reveals that most societies sanctioned the use of violence against women. The patriarch of a family was accorded the right to use force on members of the family under his control. I quote the early studies:

Traditions subordinating women have a long history rooted in patriarchy – the institutional rule of men. Women were seen in virtually all societies to be naturally inferior both physically and intellectually. In ancient Western societies, women whether slave, concubine or wife, were under the authority of men. In law, they were treated as property.¹

The Roman concept of *patria potestas* allowed the husband to beat, or even kill, his wife if she endangered his property right over her. Judaism, Christianity and other religions oriented towards the patriarchal family strengthened the male dominated structure of society.

English feudal law reinforced the tradition of male control over women. Even the eminent Blackstone has been quoted in his commentaries

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¹ EVA SCHLESINGER BUZAWA, DOMESTIC VIOLENCE: THE CRIMINAL JUSTICE RESPONSE 58 (3rd ed., 2002).

as saying husband and wife were one and that one was the husband.² However, in the late 1500s and through the entire 1600s, English common law began to limit the right of husbands to chastise their wives. Thus, common law developed the rule of thumb, which allowed husbands to beat their wives with a rod or stick no thicker than their thumb.³

In the later part of the 19th century, legal recognition of these rights to chastise wives or inflict corporeal punishment ceased. Even then, the preservation of the family was given more importance than preventing violence to women.

The metamorphosis of the law on violence in the United States followed that of the English common law. In 1871, the Supreme Court of Alabama became the first appellate court to strike down the common law right of a husband to beat his wife:

The privilege, ancient though it may be, to beat one's wife with a stick, to pull her hair, choke her, spit in her face or kick her about the floor, or to inflict upon her like indignities, is not now acknowledged by our law.... In person, the wife is entitled to the same protection of the law that the husband can invoke for himself.⁴

As time marched on, the women's advocacy movement became more organized. The temperance leagues initiated it. These leagues had a simple focus. They considered the evils of alcoholism as the root cause of wife abuse. Hence, they demonstrated and picketed saloons, bars and their husbands' other watering holes. Soon, however, their crusade was joined by suffragette movements, expanding the liberation movement's agenda. They fought for women's right to vote, to own property, and more. Since then, the feminist movement was on the roll.

The feminist movement exposed the private invisibility of the domestic violence to the public gaze. They succeeded in transforming the issue into an important public concern. No less than the United States Supreme Court, in the 1992 case *Planned Parenthood v. Casey*,⁵ noted:

In an average 12-month period in this country, approximately two million women are the victims of severe assaults by their male

² ELIZABETH SCHNEIDER, *BATTERED WOMEN AND FEMINIST LAWMAKING* 13-14 (2002).

³ BUZAWA, *supra* note 1, at 61.

⁴ *Id.* at 64.

⁵ 505 U.S. 833 (1992).

partners. In a 1985 survey, women reported that nearly one of every eight husbands had assaulted their wives during the past year. The [American Medical Association] views these figures as "marked underestimates," because the nature of these incidents discourages women from reporting them, and because surveys typically exclude the very poor, those who do not speak English well, and women who are homeless or in institutions or hospitals when the survey is conducted. According to the AMA, "researchers on family violence agree that the true incidence of partner violence is probably *double* the above estimates; or four million severely assaulted women per year."

Studies on prevalence suggest that from one-fifth to one-third of all women will be physically assaulted by a partner or ex-partner during their lifetime. . . . Thus on an average day in the United States, nearly 11,000 women are severely assaulted by their male partners. Many of these incidents involve sexual assault. . . . In families where wife beating takes place, moreover, child abuse is often present as well.

Other studies fill in the rest of this troubling picture. Physical violence is only the most visible form of abuse. Psychological abuse, particularly forced social and economic isolation of women, is also common.

Many victims of domestic violence remain with their abusers, perhaps because they perceive no superior alternative. . . . Many abused women who find temporary refuge in shelters return to their husbands, in large part because they have no other source of income.... Returning to one's abuser can be dangerous. Recent Federal Bureau of Investigation statistics disclose that 8.8 percent of all homicide victims in the United States are killed by their spouses. . . . Thirty percent of female homicide victims are killed by their male partners.⁶

Finally in 1994, the United States Congress enacted the Violence Against Women Act.

In the international front, the women's struggle for equality was no less successful. The United States Charter and the Universal Declaration of Human Rights affirmed the equality of all human beings. In 1979, the UN General Assembly adopted the landmark Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).⁷ In 1993, the UN General Assembly also adopted the Declaration on the Elimination of

⁶ *Id.* at 891-92.

⁷ U.N. Doc. A/34/46 (1979). The Philippines ratified the CEDAW on August 5, 1981, and its Optional Protocol on October 6, 2003.

Violence Against Women.⁸ World conferences on the role and rights of women have been regularly held in Mexico City, Copenhagen, Nairobi and Beijing. The UN itself established a Commission on the Status of Women.

The Philippines has been in cadence with the half- and full-steps of all these women's movements. No less than section 14, article II of our 1987 Constitution mandates the State to recognize the role of women in nation building and to ensure the fundamental equality before the law of women and men. Our Senate has ratified the CEDAW as well as the Convention on the Rights of the Child and its two protocols.⁹ To cap it all, Congress, on March 8, 2004, enacted Rep Act No. 9262, entitled "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties therefore and for other Purposes."

Rep. Act No. 9262 harnessed the criminal justice system to solve the problem of domestic violence. Let me now discuss the rule approved by the High Court to implement this law. Under Rep. Act No. 9262, the domestic violence victim's principal weapon is the protective order, which she can secure from the courts. Through the Rule, the High Court laid down the procedure in getting this protective order. Let me brightline its main points.

First, we noted that violence against women often takes place in families belonging to the low-income group. Victims' profiles show that many: (a) are ill-educated; (b) suffer from financial incapacity; and (c) live in distant places where there are yet no Family Courts.

We addressed the first problem by drawing up a checklist to facilitate petitions for protection orders. We also prepared the petition's standard form, whether filed by the victim or a representative. It has boxes, which can be checked by the petitioner without difficulty. We tasked the Clerks of Court to help petitioners use the standard forms.

We addressed the second problem by exempting an indigent from the payment of docket fees and other expenses. It could happen that the offended party is not an indigent but the suddenness of the violence against her gives her no opportunity to access her finances. In such cases, the court is ordered to accept the petition where there is a showing of imminent danger or threat of danger to the life or limb of the petitioner.

⁸ U.N. Doc. A/RES/48/104 (1993).

⁹ U.N. Doc. A/RES/44/25 (1989).

We addressed the last problem by allowing petitions to be filed with the trial court with territorial jurisdiction over the offended party's place of residence.

Second, the acts criminalized by Rep. Act No. 9262 are numerous and far ranging. They include, among others, physical and sexual violence, psychological violence and economic abuse. Prohibited acts need to be prevented immediately for any vacillation may bring irreparable injury to the victim.

The Rule addressed this problem by granting the judge the power to issue an *ex parte* temporary protection order with a lifetime of thirty days. There need not be any fear that the judge may have no rational basis to issue an *ex parte* order. Under the Rule, the petition's allegations are verified by the victim. The Rule also requires the petitioner to attach her witnesses' affidavits to the petition.

An offender cannot avoid a protective order simply by leaving the issuing court's territorial jurisdiction, preventing its service on him. The offender can run but he cannot hide for, under the Rule, the protective order is enforceable anywhere in the Philippines.

The order's strict enforcement was also taken into account by the Rule. It requires law enforcement officers to submit a written report to the court within twenty-four hours and show how they implemented the order.

In addition, the Rule considered the victim's personal safety. It requires a social worker to prepare a case study and program of intervention for the offended party, including referral to Department of Social Welfare and Development havens and other crisis intervention centers. The social worker is also mandated to monitor the offender's compliance with the protection order.

Third, if there is any factor that can negate the right of a victim of domestic violence, it is judicial delay. For this reason, the Court tightened the timeline in deciding petitions. The Rule requires the offender to file his Opposition to the petition within five days. This must be verified and accompanied by his witnesses' affidavits. At this early stage, all the evidence of the parties – the offended and the offender – will already be placed before the eyes of the judge.

The Court kept the proceedings as simple as possible. Under the Rule, the offender is barred from raising any counterclaim, cross-claim or

third party complaint in his Opposition. He should file such claims in a separate proceeding. Impleading other parties and interposing other issues will hinder the quick disposition of a petition for protection order. In accord with this approach, the Rule also prohibits pleadings with dilatory effects such as motions for extension of time to file opposition, postponements, bill of particulars, memorandum, and others.

The Rule likewise requires the holding of an early preliminary conference. During this conference, the parties are to submit their position papers. With all the evidence already on hand, plus the parties' position papers, a competent judge can dispose most of the issues. In the event a further hearing is necessary, the judge has to apply the Rule on Summary Procedure. This will further assure the early termination of the proceedings.

The Court is aware of the social sensitivity of the issues in petitions for protective orders. While domestic violence has been criminalized, incidents retain some of their private aspects. Some litigants still prefer to keep the curtains drawn down on family disputes. Hence, during the hearing, the Rule allows the exclusion of persons who do not have a direct interest in the case. The victim of domestic violence and her witnesses can also testify by live link television. The proceedings are kept confidential.

The petition for protection order has to be decided within thirty days after the hearing's termination. The aggrieved party may appeal but this will not stay the enforcement of the final order or judgment.

As I stressed earlier, petitioning for a protective order is just one of the offended party's remedies. She has also the remedy of filing a criminal case or a civil case for damages against the offender. The availability of these three remedies raises a host of difficult procedural problems. Among others, they involve the conflict of jurisdiction between regular and Family Courts; the petition for protection order's independence from the criminal and civil actions; the treatment of an application for protection order when it is filed after the criminal or civil action for damages has already been instituted; the different quantum of evidence necessary in these actions; and the rule of procedure to govern each. All these are treated in the Rules and for lack of time cannot be discussed on this occasion.

The Rule also regulated some aspects of the Barangay Protection Order. Among others, it provided for the court where one files violations of a barangay protection order; the procedure for hearing said complaints; and mode of appeal from a judgment of violation of a barangay protection order.

In conclusion, let me say that we have come a long way in responding to the problem of violence against women and their children. After centuries of searching for solutions, we have joined the world's more advanced countries in trusting our criminal justice system to give relief to victims of domestic violence. All the remedies of the victim – a criminal action, a civil action for damages or a petition for protection order – are lodged with our criminal justice system. This is a big challenge to our justice system's efficacy. The success of Rep Act No. 9262 lies in the cooperative endeavors of the police, the prosecution, and the judges.

I took pains in laying down the historical and social context of the women's movement against domestic violence to underscore its big difference compared to other crimes in our statute books. For while Rep. Act No. 9262 has criminalized domestic violence, its criminalization may not be completely acceptable to some of our people considering the remnants of our male dominated society. For in tension against this new approach is our laws' stubborn thrust proclaiming the sanctity and indissolubility of marriage, as well as the preservation of the family as an institution. The paradigm shift changing the character of domestic violence from a private affair to a public offense will require the development of a distinct mindset on the part of the police, the prosecution and the judges.

But this is not all, for the feminist movement is not yet done. Today, the feminist movement is rooting out the etiology of domestic violence peculiar to different classes of women – the most maltreated and the least empowered of them, politically, socially and economically speaking. There will be further developments in the feminist front and we, in the discipline of law, should fully understand their efforts. For the history of the women's movement against domestic violence shows that one of its most difficult struggles was the fight against the violence of law itself. If we keep that in mind, law will not again be a hindrance to the struggle of women for equality but will be its fulfillment. We crafted the Rule on Violence Against Women and Their Children in that spirit.