

CONFRONTING RAPE ISSUES, 23 MAR 2006

The Women's Centre for Change welcomes the move by the government to broaden the definition of rape to cover more acts of sexual assault under proposed amendments to the Penal Code (STAR 8/2/04). Groups such as ours have long campaigned for an expansion of the definition of rape to

- recognize that other forms of violent acts take place in rape cases other than penile penetration,
- treat insertion of objects as principal offences rather than secondary indecent assaults and
- ensure punishments reflect the severity of the crime.

Under the present definition of rape, the prosecution has to prove penile penetration to convict a person of rape. If a victim has been sexually assaulted with an object, e.g., bottle or stick inserted into the vagina, there is currently no provision to reflect rape. The rapist would possibly be charged with outraging of modesty which carries a lighter sentence. But with a wider definition of rape to include other forms of penetration and sexual assault, the prosecution would be able to ensure that such acts of violence would also fall under the category of rape and the perpetrators could then be punished accordingly.

While broadening definitions so as to reflect the severity of the crime is a step in the right direction, the issue of evidence (and thus conviction) still needs to be examined.

The following are some issues often raised in court during rape trials, as reported in the newspapers, which cast doubt over a person's allegation of rape.

Delay in reporting rape

It is not uncommon for a rape survivor to keep silent about the rape for all kinds of reasons. Some may fear reprisal, unwanted publicity, embarrassment, rejection, or humiliation. (STAR15/2/01 Bus driver freed of rape conviction – the victim lodged a police report against her father one year after the incident). Given the stigma attached to rape victims and the trauma of reporting (more so in the case of incest), many never do. A delay in reporting does not negate the fact that rape took place. It has been estimated that only 1 in 10 rapes get reported. This indicates how difficult it is for rape victims to come forward to lodge an official report.

Lack of physical injury

Often when there is a delay in reporting (i.e. anything more than 72 hours) physical evidence is hard to obtain. Bruising may have healed unless very severe, and forensic

evidence like blood or semen may have been washed away. Alternatively the victim may not have put up a struggle for fear of her life. She may have submitted to the assault bearing in mind that submission does not mean consent (SUN 24/9/02 Cop freed of rape – the victim did not shout or struggle. This decision was overturned on appeal). Rape is a crime of violence that should not have to be supported by other acts of violence. It is erroneously etched in many of our minds that a woman must ‘fight to protect her honor’. And that if she didn’t then she somehow consented to it.

Behavior of victim after rape

Being raped is a traumatic experience. However people do vary in their reactions to trauma. Some are vocal and exhibit their feelings; others may minimize the trauma or rationalize the incident. Many may keep their feelings to themselves given the situation they are in. Just because someone is not hysterical or threatening suicide does not mean that rape did not take place. Neither should it be the case that if behavioral trauma was not witnessed after an incident then there was no trauma or incident. (NST 31/1/04 GOF men acquitted of charge of raping 13 year old girl – prosecution did not introduce evidence to show that the victim’s behavior after the alleged incident was consistent with her being forced against her will).

No witnesses to the incident

It is not often that rape is witnessed by others. Not having witnesses does not mean that the incident did not take place. (STAR August 2001 Waiter on rape charge acquitted – 17 year old victim had physical injury to her vagina but as she was drugged unconscious during the incident, there was only circumstantial proof that the man with her did it). Further, there have also been cases where witnesses have not been called to court. It is unclear why or how this occurred, but it ultimately jeopardises the case against the accused.

No transmission of STD from victim to accused

Not contracting a sexually transmitted disease (STD) from a victim does not necessarily mean that sexual intercourse between the perpetrator and the victim did not take place. (NST31/1/04 GOF men acquitted of charge of raping 13 year old girl – there was no evidence that the accused had contracted the STD which the victim apparently had). Although STDs may be highly infectious, transmission rates are never 100%. It is also possible that had the accused been infected, early treatment would have cleared the infection. Subsequent testing for the STD would give a negative result.

Problems in recalling details

The ability to recall accurately on the witness stand every detail of the entire incident may vary from victim to victim (STAR 13/9/02 Pimp acquitted of raping school dropout – 15 year old rape victim was unable to verify whether there was one or two ball bearing studs embedded in the penis of the accused). It is difficult for anyone to recall details in court, of incidents which happened sometime ago, in front of the rapist, police, lawyers, and judge, especially if the incidents were frightening, painful, or humiliating.

Mutual consent/Suka sama suka

With statutory rape (sexual intercourse with a person below 16 years of age), the issue of consent should not even be raised. The point of this law is to protect young, impressionable girls from being taken advantage of. (STAR 28/6/03 Love letter shows consent court told – defence argues that the underaged victim seduced the accused. The accused was later convicted).

All these issues continue to be raised in rape trials, creating the situation of 'reasonable doubt in the prosecution's case'. The assessment of these issues each time they are raised, should be based on the knowledge and understanding of rape issues.

In our judicial system, a person is innocent until proven guilty and a rapist is entitled to a defence. However, we are painfully aware that the nature of the crime, the delay in reporting the crime, the emphasis on corroborative evidence, misconceptions about the crime and the judicial process itself, all work against the prosecution being able to prove rape.

It is a popular belief that women simply cry "rape!" and innocent men are incarcerated. Given the truth of how the present system works and the tendency of society to blame the victim, this is highly unlikely. It has been estimated that for every 100 rapes, only 10 are reported, out of which only 1 makes it to court and then there is a 50:50 chance that the rapist will be acquitted (AWAM, The Rape Report 2002).

If we look at the current system in practice, harsher punishments will neither ensure justice for the majority of rape victims nor reduce the crime rate because the truth of the matter is that most perpetrators are not convicted, either because they are not brought to trial (due to lack of reporting or no evidence to make a case) or they are acquitted (again due to lack of evidence or problems in the prosecution) under the present system.

Concerned groups have raised issues concerning rape time and again over the last 15 years. While we welcome the current attention given to rape, we hope the government will seriously consider the Memorandum on Proposed Amendments to

Laws Related to Rape submitted to the government last year by the Anti-Rape Task Force, a coalition of six non-governmental organisations. In addition to calling for a broader definition to rape, the group also demanded a review on the issue of consent – the inclusion of marital and aggravated rape – into the Penal Code. Proposals for punishment for the crime of rape and repeat offenders as well the creation of a compensation body for victims of rape should also be reviewed.

We maintain that the strategy forward should focus not only on punishment of the offender or broader definitions but also on prevention of the crime, management when the crime occurs, and further legal reform of the judicial process. We ask for strong government action as well as their cooperation with NGOs such as ours, to implement programs for children in schools, dealing with respect for others, and personal safety.

For all our sake, let's deal with the issue of rape comprehensively!