

ENOUGH IS ENOUGH!, 2 OCT 2002

The Women's Centre for Change, Penang (formerly Women's Crisis Centre), is extremely worried at the apparent inability of the courts to convict rapists despite the existing rape laws. There is an urgent need for a reassessment on the understanding of the law and existing attitudes of the judiciary.

Section 375 of the Penal Code states that a man is said to have committed rape if he has sexual intercourse with a woman under the following circumstances:

- a) against her will;
- b) without her consent;
- c) with her consent but obtained through intimidation or threat;
- d) with her consent if gained through deception;
- e) with her consent when she lacks understanding (e.g., intoxicated or mentally impaired);
- f) with or without consent; if the woman is less than 16 years old, it is statutory rape.

Most people understand rape as sexual intercourse against a woman's will or against her consent. However circumstances ©, (d), (e), and (f) are often overlooked. There are many instances of rape where the consent of a woman has been obtained through coercion, intimidation, or deception as acknowledged by the law. The recent acquittal of a police officer on a rape charge has been the subject of much public criticism. What appears to have been ignored is the power imbalance between the alleged perpetrator and the complainant. Submission of a rape victim under such circumstances should not necessarily be interpreted as consensual. The crime of rape must be seen in the context in which it occurred.

In a rape trial, evidence is the key issue. The court will rarely convict a rapist based on the victim's testimony alone. The court, in addition, relies heavily on physical evidence as corroborating evidence. This is based on the misconception that the rape victim would have bruises to prove she was defending herself and not consenting to the act.

Testimonies from rape victims all over the world indicate that often, struggling or fighting back is not an option if the woman is in fear for her life, intimidated, in shock, or under deception. Under these circumstances, the rape victim may not sustain physical injury. Even in instances where the rape victim does sustain physical injuries, these injuries may have healed by the time the rape is reported. The Rape Report (AWAM, 2002), shows that that the average number of days a rape victim can take to make a report is 46.4 days. This is also dependent on the type of rape i.e., Statutory Rape (42.3 days); Incest (89.1 days); Gang Rape (40 days) and Rape (14

days). This delay in reporting is often due to shame, shock, and fear and should not be used against the rape survivor as false reporting.

Hence, focusing on physical injury alone only serves to minimise the enormity of the violation, the abuse of power, and disregards the emotional trauma a victim undergoes for the rest of her life.

Given the above, arguments such as not fighting back, not having bruises, or not reporting the rape immediately, should never be used to cast doubt on the allegation of rape, and so allow the acquittal of the rapist.

Despite campaigns by women's groups for greater understanding on the true dynamics in the crime of rape, the crime remains shrouded in myths against the victim. While WCC and women's groups welcome the Attorney General's appeal against the recent acquittal of police officer on a rape charge, WCC is aware that as long as current trends of thinking on the dynamics of rape exist in our courts and society, rape victims will not get the justice they deserve. Stringent laws and punishments will mean nothing if the courts do not understand these dynamics.

Against the odds, the rape victim braves herself to make a report and goes to court to seek justice. It is a travesty of justice when rapists are acquitted based on a lack of understanding of the law, misconceptions, and prejudice.

It is paramount that those involved in the administration of justice, including the police and the judiciary, be educated and trained on the true dynamics of rape so that justice can be duly served. Enough is enough.