

# Finding Maria Clara — The Doctrine and the Filipina

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## I. INTRODUCTION

*Hindi hinimatay si Maria Clara, palibhasa'y hindi pa marunong himatayin ang mga Filipina noon.*

— Dr. Jose Rizal<sup>1</sup>

In the past year, the value of a woman's word took center-stage. It prompted an in-depth look into the nature of rape and sexual harassment allegations, *vis-à-vis* the prosecution of such crimes.

No less than the Norwegian Nobel Committee recognized rape and other forms of sexual abuse as a weapon and a form of violence against the inherent dignity of a human person when it awarded the 2018 Nobel Peace Prize to Denis Mukwege and Nadia Murad “for their efforts to end the use of sexual violence as a weapon of war and armed conflict.”<sup>2</sup> Perhaps of wider

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1. This translates to “Maria Clara did not faint, because Filipino [w]omen do not yet know how to faint.” JOSE RIZAL, *NOLI ME TANGERE* 154 (Virgilio Almario, trans., 1999). JOSE RIZAL, *NOLI ME TANGERE* 145 (Soledad Lacson-Locsin, trans., 1997).

2. The Nobel Peace Prize for 2018, available at <https://www.nobelprize.org/prizes/peace/2018/press-release> (last accessed Nov. 30, 2018).

publicity are the events and circumstances surrounding the confirmation hearing of Justice Brett Michael Kavanaugh (Kavanaugh), which was punctuated by the sexual harassment allegations made by Dr. Christine Blasey Ford (Dr. Ford) for acts committed by the newly-appointed Associate Justice of the Supreme Court of the United States when they were still in high school.<sup>3</sup> The mass assemblage for and against Kavanaugh surfaced deep-rooted ills in the prosecution and reception of rape and sexual harassment. One side claimed that the allegations made were political in nature and, even if they were not, they should not have been made because these kinds of allegations ruin a man's good name.<sup>4</sup> Some also said that Dr. Ford's allegations came too late, and they should no longer be considered due to the lapse of time between the event and her coming forward.

There is also the case of Stormy Daniels who came out with sexual harassment allegations against United States President Donald J. Trump (Trump).<sup>5</sup> Many refused to believe her testimony on account of her background as a worker in the sex industry. Worse, there were those who faulted her for the harassment she experienced. Others put premium on the non-disclosure and settlement agreement she signed with Trump, saying that she should have honored the same. In fact, her coming forward is now being taken against her by Trump's legal team.

As one would expect, these things do not only happen in the political and public spaces of society. A case-in-point is the much-publicized case of Brock Turner, who, after having been convicted of sexual assault, was only made to serve three months of jail time.<sup>6</sup> The narrative put forth highlighted Turner's bright future as a competitive swimmer.

These and many other events entered public consciousness and prompted women and their allies all over the world to take to the streets and

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3. See Sheryl Gay Stolberg et al., *Brett Kavanaugh and Christine Blasey Ford Duel with Tears and Fury*, N.Y. TIMES, Sep. 27, 2018, available at <https://www.nytimes.com/2018/09/27/us/politics/brett-kavanaugh-confirmation-hearings.html> (last accessed Nov. 30, 2018).

4. *Id.*

5. See Jim Rutenberg et al., *Stormy Daniels Lawsuit Opens Door to Further Trouble for Trump*, N.Y. TIMES, Mar. 8, 2018, available at <https://www.nytimes.com/2018/03/08/us/politics/stormy-daniels-trump-legal-case.html?module=inline> (last accessed Nov. 30, 2018).

6. See Christine Hauser, *Brock Turner Loses Appeal to Overturn Sexual Assault Conviction*, N.Y. TIMES, Aug. 9, 2018, available at <https://www.nytimes.com/2018/08/09/us/brock-turner-appeal.html> (last accessed Nov. 30, 2018).

protest against institutional oppression of women, especially victims of rape and other forms of sexual abuse. This movement came to be known as the “Women’s March.”<sup>7</sup> A parallel series of similar events in Hollywood, which started with sexual harassment allegations against industry executives, gave birth to the “#MeToo” movement, which urged victims of sexual abuse, sexual harassment, and sexual violence to come forward.<sup>8</sup>

In the later event, the public is seen protesting about the fact that even though women had suffered from a history of assault, those who knew about it, especially the men, kept silent about this.<sup>9</sup> Privilege and internalized-machismo in the public and private sphere are legacies of many years of oppression.

At the core of many of these movements is an advocacy to believe victims, or at least listen to them intently when they come forward with stories of their abuse. There is a call to let the woman speak before an unbiased public — an audience which does not immediately blame her, impute malice on her decision to come forward, nor prejudice her by calling into question her character and her appearance.

Women narrating their abuse must first overcome biases against her credibility. These biases include:

Women are heterosexual and their paramount duty is to fulfil the roles of wife and mother/caregiver.

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It is ‘permissible’ for a man to use violence to control a woman who is not heterosexual or does not perform these roles ([e.g.] lesbians, bisexual

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7. See Alexandra Richards, *Women’s March 2018: Activists across the globe rally against sexual harassment, inequality and Donald Trump*, EVENING STANDARD, Jan. 21, 2018, available at <https://www.standard.co.uk/news/world/womens-march-2018-women-across-the-globe-rally-against-sexual-harassment-inequality-and-trump-a3745761.html> (last accessed Nov. 30, 2018).
  8. See Samantha Schmidt, *#MeToo: Harvey Weinstein case moves thousands to tell their own stories of abuse, break silence*, WASH. POST, Oct. 16, 2017, available at [https://www.washingtonpost.com/news/morning-mix/wp/2017/10/16/me-too-alyssa-milano-urged-assault-victims-to-tweet-in-solidarity-the-response-was-massive/?noredirect=on&utm\\_term=.8f719d173a48](https://www.washingtonpost.com/news/morning-mix/wp/2017/10/16/me-too-alyssa-milano-urged-assault-victims-to-tweet-in-solidarity-the-response-was-massive/?noredirect=on&utm_term=.8f719d173a48) (last accessed Nov. 30, 2018) & Jennifer L. Airey, *#MeToo*, TULSA STUD. WOMEN’S LIT., Volume No. 37, Issue No. 1, at 7-13.
  9. Lena Dunham, *Lena Dunham: Harvey Weinstein and the Silence of the Men*, N.Y. TIMES, Oct. 9, 2017, available at <https://www.nytimes.com/2017/10/09/opinion/harvey-weinstein-lena-dunham-silence-.html> (last accessed Nov. 30, 2018).

women, women who pursue roles other than or in addition to the roles identified).

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Women should dress and behave to avoid impropriety and indecency, especially to avoid sexual attention.<sup>10</sup>

These preconceptions and misconceptions about rape and sexual abuse, pervade both the socio-cultural fabric of different societies as well as their formal legal systems. The prosecution of the crime of rape and other forms of sexual abuse occurs within a system that hears women's testimonies with great doubt. The *onus probandi* is upon the victim to prove that she did not "ask for it."

Seen in the above light, the Philippines is quite unique. The Philippine Supreme Court has come up with doctrinal pronouncements which facilitate the establishment of a rape or sexual abuse victim's credibility. However, before the court is able to rely on said doctrine, the victim must still meet certain criteria for her testimony to become credible. She must be young; she must appear innocent; she must not have ill motives against the rapist or abuser; and/or she must have been chaste prior to the incident.<sup>11</sup>

This rule of selectively lending credence to testimonies of rape and other forms of sexual exploitation is inspired by one of the characters in Dr. Jose Rizal's *Noli Me Tangere* — Maria Clara. Among the many characters of Rizal, Maria Clara seems to be the most elusive and mysterious — her parentage was suspect; her interests were unpronounced; and her fate

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10. Simone Cusack, Eliminating judicial stereotyping: Equal access to justice for women in gender-based violence cases (A final paper submitted to the Office of the High Commissioner on Human Rights on 9 June 2014) at 18-21, *available at* <https://www.ohchr.org/Documents/Issues/Women/WRGS/StudyGenderStereotyping.doc> (last accessed Nov. 30, 2018).

11. Amparita D. Sta. Maria, An Analysis of Supreme Court decisions on Rape and Sexual Assault: Assessing their Compliance with the Convention on the Elimination of Discrimination Against Women (CEDAW) Mandate to Eliminate Gender Discrimination and Promote Gender Equality (A Research Paper Produced for the *Hustisya Natin* Project with the Support of the European Union) at 6-10, *available at* <http://www.hustisyanatin.org/wp-content/uploads/2018/06/Hustisya-Paper-final.pdf> (last accessed Nov. 30, 2018) (citing *People v. Tejero*, 674 SCRA 244 (2012); *People v. Salvador*, 760 SCRA 180 (2015); *People v. Biala*, 775 SCRA 381 (2015); *People v. Llanas, Jr.*, 622 SCRA 602 (2010); *People v. Estrada*, 610 SCRA 222 (2010); *People v. Relanes*, 648 SCRA 325 (2011); *People v. Tolentino*, 695 SCRA 545 (2013); *People v. Baraoil*, 676 SCRA 24 (2012); & *People v. Buca*, 771 SCRA 457 (2015)).

remains the subject of literary analysis and conjecture.<sup>12</sup> She is revered as the archetypal Filipina woman — beautiful, meek, reserved. She is also a victim of the patriarchal institutions,<sup>13</sup> and a rape survivor.<sup>14</sup> She inspired what is now known as the *Maria Clara* doctrine, first enunciated in the case of *People v. Taño, et al.*<sup>15</sup> In this case, the Court said that

[i]t is [a] well-known fact that women, especially Filipinos, would not admit that they have been abused unless that abuse had actually happened. This is due to their natural instinct to protect their honor. We [cannot] believe that the offended party would have positively stated that intercourse took place unless it did actually take place.<sup>16</sup>

In *Taño*, the root of the Court's lending credence to the offended party is her character as an ideal Filipino woman. In concocting the image of an ideal Filipino woman, the Court, in cases following *Taño*, has alluded to Maria Clara and her Marian origins. In its current form, the doctrine imposes the characteristics of Rizal's Maria Clara upon victims of rape and sexual abuse, asking said victims to fit the "Maria Clara" mold in order that she may be avenged by judicial machinery.<sup>17</sup> The heart of the *Maria Clara* doctrine is the belief in the testimony of the survivor because she fits a certain archetype, which archetype flows from the construction of rape, dignity, innocence and sex.<sup>18</sup> It puts premium on her testimony as possibly the only witness to the villainous and vile act committed against her.<sup>19</sup> In time, the pronouncement evolved into an evidentiary yardstick to gauge whether rape has been committed.<sup>20</sup> Several caveats and colatilla were attached thereto, and its application became unpredictable and arbitrary. In

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12. MA. CORONA ROMERO, ET AL., RIZAL AND THE DEVELOPMENT OF NATIONAL CONSCIOUSNESS 96-97 (2006).

13. *Id.*

14. RAQUEL REYES, LOVE, PASSION AND PATRIOTISM: SEXUALITY AND THE PHILIPPINE PROPAGANDA 125 (2008) (citing JOSE RIZAL, NOLI ME TANGERE 422-26 (1978 ed.)).

15. *People v. Taño*, 109 Phil. 912 (1960).

16. *Id.* at 914.

17. *See* *Sta. Maria*, *supra* note 11, at 6-10.

18. *See* *People v. Amarela*, G.R. Nos. 225642-43, Jan. 17, 2018, at 7, *available at* <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/january2018/225642-43.pdf> (last accessed Nov. 30, 2018).

19. *Id.*

20. *Id.*

the recent case of *People v. Amarela*,<sup>21</sup> the Third Division of the Court, through Justice Samuel R. Martires (Justice Martires), suggested the abandonment of the doctrine —

[The *Maria Clara* doctrine] borders on the fallacy of *non [sequitur]*. And while the factual setting [in the 1960s when *Taño* was decided] would have been appropriate to say it is natural for a woman to be reluctant in disclosing a sexual assault; today, we simply cannot be stuck to the *Maria Clara* stereotype of a demure and reserved Filipino woman. We[ ] should stay away from such mindset and accept the realities of a woman's dynamic role in society today; she [ ] has over the years transformed into a strong and confidently intelligent and beautiful person, willing to fight for her rights.

In this way, we can evaluate the testimony of a private complainant of rape without gender bias or cultural misconception. It is important to weed out these unnecessary notions because an accused may be convicted solely on the testimony of the victim, provided of course, that the testimony is credible, natural, convincing, and consistent with human nature and the normal course of things. Thus, in order for us to affirm a conviction for rape, we must believe beyond reasonable doubt the version of events narrated by the victim.<sup>22</sup>

It must be noted that *Amarela* was a decision by a Court division, and pursuant to the mandate of the 1987 Constitution on the reversal of doctrines,<sup>23</sup> it could not have the effect of abandoning and/or reversing the *Maria Clara* doctrine. Be that as it may, *Amarela* catalyzes proper inquiry into the state of our laws and jurisprudence on the matter, in light of global and national events relating thereto. The Authors ask: Should the Philippine Supreme Court abandon the *Maria Clara* doctrine?

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21. *Id.*

22. *Id.*

23. PHIL. CONST. art. VIII, § 4, para. 3. Article VIII, Section 4 of the Constitution provides that

[c]ases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case, without the concurrence of at least three of such Members. When the required number is not obtained, the case shall be decided *en banc*. *Provided*, that no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc*.

PHIL. CONST. art. VIII, § 4, para. 3.

This Article forwards the following thesis: The *Maria Clara* doctrine should not be abandoned. It must instead be applied equally to all victims without qualification regardless of age, level of maturity, or “sophistication,” and replanted as (a) a doctrine that embodies the experience and identity of the modern Filipina, (b) a doctrine that strengthens the Philippines’ Anti-Rape laws by encouraging victims to come forward and tell their stories, and (c) a rule of evidence consistent with our international obligations under the Convention on the elimination of all Forms of Discrimination Against Women (CEDAW) and domestic laws to eliminate discrimination through gender bias and stereotyping.

The first part of the Article discusses the crime of rape in general and traces the legislative history of the Philippines’ Anti-Rape legislation. This is followed by a discussion of the *Maria Clara* doctrine — its history, application, and its proposed reversal. The Article then forges a new foundation for the *Maria Clara* doctrine, built upon the actual lived experiences of Filipino women and girls, and consistent with our domestic laws and international obligations.

## II. THE CRIME OF RAPE

### A. *Nature and Elements*

The criminalization of rape finds its roots in ancient principles which see women as property and their virginity the core of their value. “[*Q*]uum *virginitas, vel castitas, corrupta restitui non[*potest.*]*”<sup>24</sup> In other words, rape was a crime committed against the father, husband, brother, or son of the woman because it lowers the “value” of their property. A more nuanced understanding of rape as a crime evolved over the centuries.

In the Philippine jurisdiction, the crime of rape was initially classified as a crime against chastity. Under Republic Act No. 8353, it was reclassified as a crime against persons.<sup>25</sup> Few understand the repercussions of this change in

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24. CODE JUST. 9.13.1 (Justinian, 528). This translates to “since the virginity or chastity which has been destroyed cannot be restored.” 1-2 THE CIVIL LAW: INCLUDING THE TWELVE TABLES, THE INSTITUTES OF GAIUS, THE RULES OF ULPIAN, THE OPINIONS OF PAULUS, THE ENACTMENTS OF JUSTINIAN, AND THE CONSTITUTIONS OF LEO 24 (Samuel Parsons Scott ed., 2001).

25. An Act Expanding the Definition of the Crime of Rape, Reclassifying the Same as a Crime Against Persons, Amending for the Purpose Act No. 3815, as Amended, Otherwise Known as the Revised Penal Code, and for Other Purposes [The Anti-Rape Law of 1997], Republic Act No. 8353, § 2 (1997).

classification. It has been forwarded that the reclassification came in consideration of “the present needs and situation of society.”<sup>26</sup>

Under the Revised Penal Code, rape was defined as a “violation of a woman’s chastity by having carnal knowledge of her against her will or when she is otherwise deprived of reason or is incapable of giving a valid consent thereto.”<sup>27</sup> In the years following the enactment of the Revised Penal Code, several other conceptions of unconsented sexual relations were punished under Special Penal Laws or through amendments of the Revised Penal Code. Republic Act No. 2632 created the special complex crimes of rape committed with force and intimidation, rape with homicide, and rape resulting in insanity.<sup>28</sup> Republic Act No. 4111 increased the penalties for: (a) rape committed with the use of deadly weapon or by two or more persons, (b) rape resulting in the victim’s insanity, and (c) attempted and consummated rape, when homicide is committed by reason or on the occasion thereof.<sup>29</sup> Presidential Decree No. 767 amended Article 294 of the Revised Penal Code by increasing the penalty of robbery when accompanied by rape committed with the use of a deadly weapon or by two or more persons.<sup>30</sup> Republic Act No. 7610 criminalized the act of having sexual intercourse with or committing lascivious acts on a child exploited in prostitution or subjected to other sexual abuse.<sup>31</sup> Republic Act No. 7659 classified rape as a heinous crime <sup>32</sup> which is qualified by the circumstances mentioned under Republic Act No. 4111 or aggravated by the following circumstances:

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26. *Venus V. Lique, The Anti-Rape Law and the Changing Times: Nature, Issues and Incidents*, 43 *ATENEO L.J.* 141, 145 (1998).

27. *Id.* at 146.

28. An Act to Amend Article Three Hundred and Thirty-five of the Revised Penal Code (Re: Rape), Republic Act No. 2632, § 1 (1960) (as amended).

29. An Act to Amend Further Article Three Hundred and Thirty-five of the Revised Penal Code (Re: Rape), Republic Act No. 4111, § 1 (1964).

30. Amending Article 294 (2) of the Revised Penal Code, Presidential Decree No. 767 (1975).

31. An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes [Special Protection of Children Against Abuse, Exploitation and Discrimination Act], Republic Act No. 7610, § 5 (1992).

32. An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Laws, as Amended, Other Special Penal Laws, and for Other Purposes, Republic Act No. 7659, § 11 (1993).

- (1) when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.
- (2) when the victim is under the custody of the police or military authorities.
- (3) when the rape is committed in full view of the husband, parent, any of the children, or other relatives within the third degree of consanguinity.
- (4) when the victim is a religious or a child below seven (7) years old.
- (5) when the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.
- (6) when committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.
- (7) when by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation.<sup>33</sup>

The classification of rape as a heinous crime was discussed in *People v. Reyes*<sup>34</sup> in this wise —

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, may appear excessive. Nonetheless, there is sound reason for such severity. It is an intrusion into the right of privacy, an assault on 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.<sup>35</sup>

It is to be noted that the imposition of death penalty was suspended by Republic Act No. 9346.<sup>36</sup> Nonetheless, rape's classification as a heinous crime remains.

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33. The Anti-Rape Law of 1997, § 2.

34. *People v. Reyes*, 60 SCRA 126 (1974).

35. *Id.* at 127.

36. An Act Prohibiting the Imposition of Death Penalty in the Philippines, Republic Act No. 9346, § 2 (2006).

The Anti-Rape Law of 1997 was passed with the principal intent of addressing the “increasing problem of rape incidents, carrying with it the seemingly aggravating abuse on women and children ... [reflecting] the interests, perspectives[,] and foresight of people who make [the] laws. Just as the norms of society change, so too should laws change with times.”<sup>37</sup> The reclassification recognizes

[t]he predominance of physical violence in many rape cases[, changing] the notion of rape from a sex crime to an assault against the person with sex as the weapon. Such change is brought about by the realization that the chastity of a woman has no significant bearing on the crime of rape.

...

The re-classification enables any person to institute the filing of the complaint.<sup>38</sup>

As earlier stated, the Anti-Rape Law of 1997 reclassified rape as a crime against persons and amended the provisions on rape in the Revised Penal Code.

#### *B. Investigation, Prosecution, and the Administration of Justice in the Crime of Rape*

The enactment of the Anti-Rape Law of 1997 envisioned the crime of rape to be a public concern instead of a private crime. By reclassifying the crime, the legislation sought to move the focus from the victim’s chastity to the perpetrator’s criminal act, much the same way as other crimes against persons are prosecuted, i.e., the focus is on the fact of the crime and not necessarily, or at least not initially, on the character of the victim. There are some cases reflective of this shift in perspective. In these cases, the courts focus moved away from the victim’s character and corralled the decision within the facts relevant to the violence committed. In other words, the character of the victim was made less of an issue.

The case of *People v. Landicho*<sup>39</sup> stated that “[t]he testimony of the offended party[,] most often[,] is the only one available to prove directly the commission of rape; corroboration by other eyewitnesses is seldom available ... The testimony, however, must be conclusive, logical, and probable.”<sup>40</sup> In

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37. Lique, *supra* note 26, at 154 (citing SENATE DELIBERATIONS 26 (Aug. 15, 1996)).

38. *Id.* at 156 (citing ISAGANI CRUZ, PHILIPPINE POLITICAL LAW 3-4 (1989) & SENATE DELIBERATIONS 17 (Aug. 6, 1996)).

39. *People v. Landicho*, C.A. 43 O.G. 3767, (CA 1947).

40. *Id.* at 3770.

*People v. Blance*,<sup>41</sup> the Court held that the character of the offended woman is immaterial in rape.<sup>42</sup> The Court had also said that when resistance would be futile, the victim's surrender does not amount to consent.<sup>43</sup>

These pronouncements notwithstanding, the challenges to mounting a successful prosecution for the crime of rape continue to intimidate victims into silence. In a previous study published by one of the Authors herein, it was pointed out that there are far greater institutional barricades to seeking justice and redress for sexual violence. There, the Author concluded thus —

Although marital rape has been firmly established and the credibility of girl-children in rape and sexual assault cases has been facilitated by jurisprudence developed and applied consistently by courts, the stereotypes embedded in these decisions has had a negative impact on mature women. Non-consent as an element of rape and its required manifestation which is usually the degree or extent of resistance is getting to be difficult to prove especially for these women, unless force or intimidation is patently present, or unless they are rendered unconscious. Absent these factors, resistance by mature women is expected to be tenacious and reporting of the rape prompt. Further, if courts require that non-consent be signified 'before the rape is consummated,' i.e., at the beginning of the sexual intercourse, are women now precluded from changing their minds *after* the beginning? Is there no rape when this happens? The recent cases of [*People v. Tionloc*] and *Amarela* perpetuate the stereotype that men cannot control their biological urges and therefore, women should already refuse and clearly manifest this at the beginning. If they do not do so, then rape is off the table because it would be unfair to men to expect them to stop.

Gender bias still permeates the decisions of the highest court of the land ... A genuine commitment to our CEDAW obligations requires that the court rid itself with insensitive language and gender stereotypes. It should also address the problem of double victimization of offended parties instead of regarding such practice as a litmus test in examining the credibility of women. Discrimination is present when women are prevented from exercising their right to effective remedy and access to justice due to insensitive criminal proceedings. Discrimination is also present when

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41. *People v. Blance*, 45 Phil. 113 (1923).

42. *See Blance*, 45 Phil. at 116.

43. *People v. Agbayani*, 284 SCRA 315, 341 (1998) (citing *People v. Grefiel*, 215 SCRA 596, 608 (1992); *People v. Matrimonio*, 215 SCRA 613, 630 (1992); & *People v. Pamor*, 237 SCRA 462, 472 (1994)).

decisions maintain the subordinate status of women by perpetuating Male Privilege.<sup>44</sup>

In arriving at the above conclusion, the Author looked into the language used by the High Court in reference to rape survivors and the ordeal they go through. She said,

the *flower-female genitalia* comparison can lead to gender stereotypes of young women and girls being characterized as delicate, fragile[,] and weak, which in turn can lead to their stigmatization because their ‘defilement’ practically robbed them of their chance to grow and blossom just like what is expected from a young flower.<sup>45</sup>

Next, the Author looked into the stereotypes perpetuated by the Court in lending credence to the testimonies of some victims, while discrediting others. It was observed that credibility in rape accusations, testimonies, and narratives is a function of youth, immaturity, and timidity. In the final analysis, the Author shows how the Court has taken judicial notice of the double victimization in the justice system when it points out that no woman would come forward and prostrate herself before the public as a victim of rape if she, indeed, is not.<sup>46</sup>

In overturning rape convictions, the Court has often relied on institutionalized perceptible aids. The case of *People v. Garrido*<sup>47</sup> summarizes them thusly —

In the case of rape, a review begins with the reality that rape is a very serious accusation that is painful to make; at the same time, it is a charge that is not hard to lay against another by one with malice in her mind. Because of the private nature of the crime that justifies the acceptance of the lone testimony of a credible victim to convict, it is not easy for the accused, although innocent, to disprove his guilt. [The Court is] mindful that the lone testimony of the rape victim is sufficient to sustain conviction. However, the probative value of the victim’s testimony should be measured against the evidence for the defense and must be carefully evaluated. Thus, the court has the duty to scrutinize with caution the testimony of the

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44. Sta. Maria, *supra* note 11, at 26 (citing Convention on the Elimination of All Forms of Discrimination Against Women, *opened for signature* Mar. 1, 1980, 1249 U.N.T.S. 13; *People v. Tionloc*, 818 SCRA 1 (2017); & *Amarela*, G.R. Nos. 225642-43).

45. Sta. Maria, *supra* note 11, at 6 (emphasis supplied).

46. See Sta. Maria, *supra* note 11, at 12 (citing *People v. Gersamio*, 762 SCRA 390, 406 (2015)).

47. *People v. Garrido*, 762 SCRA 185 (2015).

victim to rule a conviction. Jurisprudence lay down the following guidelines in evaluating the testimony of the victim[:] *First*, while an accusation for rape can be made with facility, it is difficult to prove but more difficult for the person accused, though innocent, to disprove; *second*, in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and *lastly*, the 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 of the defense.<sup>48</sup>

The application of the above doctrine is informed by several perceptions and gender stereotypes. A case turns upon a woman's conformity with the general public's notion of who a victim is and how the victim should act following the violation against her. True, the Court, in several instances, has held that

[r]ape victims react differently. Some may offer strong resistance while others may be too intimidated to offer any resistance at all. There is no standard form of reaction for a woman when facing a shocking and horrifying experience such as a sexual assault. The workings of the human mind placed under emotional stress are unpredictable, and people react differently [ — ] some may shout[;] some may faint[;] and some may be shocked into insensibility[;] while others may openly welcome the intrusion. However, [none] of these conducts [ ] impair the credibility of a rape victim.<sup>49</sup>

However, a faithful application of the above is few and far between. A go-to narrative for defense attorneys has been to assassinate the character of the offended party, in order to create reasonable doubt. They hope that by sullyng the woman's reputation, the judge would, in turn, treat her testimony with diffidence and acquit the accused. If the woman's past appears to be "unblemished," but she seems strong-willed, decisive, and impassive in court, she is faulted for hesitating and not promptly reporting the rape.<sup>50</sup> These perceptions are most often informed by the comings and goings in the Court of Public Opinion.

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48. *Id.* at 193 (citing *People v. Divina*, 391 SCRA 430, 434 (2002) & *People v. Bongat*, 641 SCRA 496, 506 (2011) (citing *People v. Bidoc*, 506 SCRA 481, 495 (2006) & *People v. Orense*, 433 SCRA 729, 736 (2004))).

49. *People v. Palanay*, 816 SCRA 493, 504-05 (2017) (citing *People v. Penilla*, 694 SCRA 141, 158 (2013) (citing *People v. Madeo*, 602 SCRA 425, 440-41 (2009)) & *People v. Ortoa*, 580 SCRA 80, 94 (2009)).

50. *See generally Tionloc*, 818 SCRA; Eliana Suarez & Tahany M. Gadalla, *Stop Blaming the Victim: A Meta-Analysis on Rape Myths*, J. INTERPERSONAL

C. *The Court of Public Opinion*

In a 2010 study conducted by Regina A. Schuller, Blake M. McKimmie, Barbara M. Masser, and Marc A. Klippenstine following the juror simulation methodology, they found that the validity of a rape victim's claims is measured against social perceptions of the act, the victim, and the perpetrator, *viz* —

The claims of gender-stereotypical complainants responding in an unexpected non[-]emotional way, however, may be viewed with greater [skepticism]. Indeed, the validity of the claims made by the non[-]emotional gender-stereotypic woman was perceived to be as low as the validity of the claims made by the gender-counter stereotypic woman. Such results are consistent with the notion that the validity of an alleged victim's claim is partially assessed through her emotional reaction, with the expectation that a victim of sexual assault should be emotionally distraught. The interaction of gender stereotypicality with emotionality is of particular interest as it suggests that people may use their overall judgement of the gender stereotypicality of the complainant to anchor their expectations for the emotionality of the victim.<sup>51</sup>

The applicability of the above findings in the Philippines was earlier outlined by the Author in a previous study which sought to review Supreme Court decisions on rape and other crimes involving violence against women. There, she concluded that “[m]ost of the cases accorded credibility to the offended parties mainly because they were ‘minor,’ ‘of tender age,’ ‘young and immature[,]’ or ‘not yet exposed to the ways of the world.’”<sup>52</sup> These perceptions are inversely proportional to the credibility of the victim, their propensity to tell the truth.

After establishing the influence of popular perception on judicial decisions, the next question relates to the constitution of public opinion on

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VIOLENCE, Volume No. 25, Issue No. 11, at 2010–2035; Amy Grubb & Emily Turner, *Attribution of blame in rape cases: A review of the impact of rape myth acceptance, gender role conformity and substance use on victim blaming*, 17 *AGGRESSION & VIOLENT BEHAVIOR* 443 (2012); & Kerstin Adolfsson, *Blaming victims of rape: Studies on rape myths and beliefs about rape* (2018) (unpublished Doctoral dissertation, University of Gothenburg, Faculty of Social Sciences) (available at <https://gupea.ub.gu.se/handle/2077/57769> (last accessed Nov. 30, 2018)).

51. Regina A. Schuller et al., *Judgments of Sexual Assault: The Impact of Complainant Emotional Demeanor, Gender, and Victim Stereotypes*, 13 *NEW CRIM. L. REV.* 759, 776 (2010).

52. Sta. Maria, *supra* note 11, at 7.

the matter. We ask: How is rape perceived? How are accusations handled by the public? These questions invariably hinge themselves upon how a woman is generally and specifically perceived. These perceptions and social creations inform the manner by which persons, including judges and justices, pass judgment upon either perpetrator, victim, or both.

There is the rhetoric that rape accusations ruin the lives of the accused. Behind it is the idea that women's lives, their traumas, and their ruin are secondary to that of the perpetrator. The future of the rapist or abuser as a swimmer, a justice of the highest Court, a film producer, or a President, is seemingly more important than the fact that a woman was raped or harassed.

Rape prosecutions are also affected by the lapse of time between the incident and the report, especially when the period is considerably long. "Why only now?" is a question frequently asked by the courts in assessing a victim's credibility. It is asked regardless of the length of time that has passed between the commission of the crime and the reporting of it by the victim.<sup>53</sup> These questions are born of "common experience," despite there being no standard reaction for victims.<sup>54</sup>

Finally, there is always the question "Why did you not resist?" asked in ways that imply fault upon the victim. Sometimes, it does not come in an interrogatory tone but an imposition based on one's actions, clothing, relations, previous actuations, and general disposition. "You did not resist" is weighed against the positive assertion of the victim that she did, asking her to prove by physical and mental pain or trauma the fact of her non-consent.<sup>55</sup> True, there is jurisprudence saying that physical resistance is not necessary for there to be rape.<sup>56</sup> But more recent cases have shown the Court's propensity to vacillate in the application of the doctrine on resistance. The following lines from the case of *Tionloc* are quite telling —

Force, as an element of rape, must be sufficient to consummate the purposes which the accused had in mind. On the other hand, intimidation must produce fear that if the victim does not yield to the bestial demands of the accused, something would happen to her at that moment or even thereafter as when she is threatened with death if she reports the incident.

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53. See, e.g., *People v. Ladrillo*, 320 SCRA 61, 73-4 (1999); *People v. Santos*, 366 SCRA 52, 59 (2001); & *People v. Ignacio*, 211 SCRA 796, 801-02 (1992).

54. See *People v. Achas*, 595 SCRA. 341, 352 (2009) (citing *People v. San Antonio*, 532 SCRA 411, 428 (2007)).

55. Vivian Berger, *Man's Trial, Woman's Tribulation: Rape Cases in the Courtroom*, 77 COLUM. L. REV. 1, 23 (1977).

56. *People v. Saludo*, 647 SCRA 374, 392 (2011).

‘Intimidation includes the moral kind as the fear caused by threatening the girl with a knife or pistol.’

In this case, the prosecution established that appellant was an 18-year old man who had sexual intercourse with ‘AAA,’ a woman who was 24 years old during the incident. However, there was no evidence to prove that appellant used force, threat or intimidation during his sexual congress with ‘AAA ...’

No allegation whatsoever was made by ‘AAA’ that Meneses or appellant employed force, threat[,] or intimidation against her. No claim was ever made that appellant physically overpowered, or used or threatened to use a weapon against, or uttered threatening words to ‘AAA.’ While ‘AAA’ feared for her life since a knife lying on the table nearby could be utilized to kill her if she resisted, her fear was a mere product of her own imagination...

Even assuming in the nil possibility that Meneses was able to force or instill fear in ‘AAA’s’ mind, it should be noted that he was already gone when appellant asked ‘AAA’ for a sexual favor. In other words, the source of the feigned force, threat [,] or intimidation was no longer present when appellant casually asked his friend, ‘AAA,’ if she ‘can do it’ one more time. ‘AAA’ did not respond either in the affirmative or in the negative.

...

[R]esistance must be manifested and tenacious. A mere attempt to resist is not the resistance required and expected of a woman defending her virtue, honor[,] and chastity. And granting that it was sufficient, ‘AAA’ should have done it earlier or the moment appellant’s evil design became manifest. In other words, it would be unfair to convict a man of rape committed against a woman who, after giving him the impression [through] her unexplainable silence of her tacit consent and allowing him to have sexual contact with her, changed her mind in the middle and charged him with rape.<sup>57</sup>

There are efforts to build a more gender-sensitive judiciary.<sup>58</sup> There is growing political will towards empowering women.<sup>59</sup> However, work on

57. *Tionloc*, 818 SCRA at 10-13.

58. See The Judiciary Annual Report (2016-June 2017) (An Annual Report submitted to the President and Congress pursuant to Article VIII, Section 16 of the Constitution) at 9, available at [http://sc.judiciary.gov.ph/pio/annualreports/SC\\_Annual\\_2016-2017\\_narrative%20report.pdf](http://sc.judiciary.gov.ph/pio/annualreports/SC_Annual_2016-2017_narrative%20report.pdf) (last accessed Nov. 30, 2018).

59. See, e.g., Don Kevin Hapal, PH leads Asia Pacific on gender equality in work, available at <https://www.rappler.com/move-ph/issues/gender-issues/202834-gender-equality-work-philippines-lead-asia-pacific-women> (last accessed Nov. 30, 2018); & Rappler.com, Hontiveros urges women to unite vs ‘growing

the ground must be continuously undertaken and fortified to re-lay the foundations of our social, cultural, historical, and legal landscape in relation to the criminal prosecution of rape and the general ideas and ideals of woman and womanhood. This critique endeavors to do that, in hopes of finding Maria Clara.

### III. THE MARIA CLARA DOCTRINE

#### A. Patriarchal Beginnings

##### 1. The Archetype of Maria Clara and the Filipino Conception of the Sanctity of Woman and Womanhood

The generation of the pre-colonial gender relations — which is part of the *doxa* that guide the habitus of pre-colonial communities in the Philippines — can be observed in the supernatural consciousness of the natives.<sup>60</sup> The Tagalog's version of the Creation myth narrates that man and woman came out of the bamboo at the same time and puts them on equal footing. In the Visayas, a female character, *Lupluban*, was responsible for the propagation of the laws by which the Visayans lived by. Even the conception of the Tagalog high god *Bathala* is androgynous. That the production and reproduction of these myths were left in the hands of the *binukot*, *babayalan*, and *katalonan* speaks volumes about pre-colonial Philippine society's relationship with the feminine and the sacred.<sup>61</sup>

When the Spanish first arrived in the Philippines, they sought to subdue local communities. One method which facilitated the colonization project was the establishment of a cultural hegemony. Women, being at the heart of native culture and authority structures, were a natural target. The subjugation of women in the Philippines was done under the gaze of the Catholic Church.<sup>62</sup> In their establishment of hegemony, the first step was to strip the *babaylan* of her status. This was done using a grand economy of

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culture of misogyny' in PH, available at <https://www.rappler.com/nation/170005-risa-hontiveros-she-for-she-forum> (last accessed Nov. 30, 2018).

60. Jean-Noël Sanchez, Construction and deconstruction of Maria Clara: History of an imagined care-oriented model of gender in the Philippines at 2-3, available at <http://www.kuasu.cpier.kyoto-u.ac.jp/wp-content/uploads/2015/12/JN-Sanchez-Paper.pdf> (last accessed Nov. 30, 2018).

61. See CAROLYN BREWER, SHAMANISM, CATHOLICISM, AND GENDER RELATIONS IN COLONIAL PHILIPPINES, 1521-1685 (2004).

62. BREWER, *supra* note 55, at 17 & 63.

signs and symbols. The *babaylan* was called a “*bruha*” or witch, along with other names, all of which established that the *babaylan*’s power stemmed from demonic forces. With the introduction of the *bruha* came a plethora of female monsters that are still known today.<sup>63</sup> The success of this colonial project is described thus —

The bourgeoisie tended clearly to adopt behavior pattern similar to European standards in the same period, that is, to withdraw women from the public sphere, to form them in order to comply and remain amongst the circle of a retrained domestic life.

This evolution implicated the diffusion of a model of feminine behavior of reserve and decency following the Spanish model of the *manuales de urbanidad* [—] manuals of urbanity [—] particularly exemplified though the book *Ang Pagsusulat ng Magkapatid na si Urbana at Felisa* by Filipino Priest Modesto de Castro, published in 1864 and certainly intended for the middle class. The book aimed at ‘civilizing’ or colonizing women’s body through the teaching of a strict pattern of good manners and etiquette focused on the reproduction of desirable behaviors such as religious devotion, motherhood and domesticity, chastity and virginity, perseverance[,] and submission to men.<sup>64</sup>

With the arrival of the Americans and their new cultural package, came the institutionalization of the role of the mother as the “Light of the Household” or “*Ilaw ng Tahanan*.” The new public-school system of the Thomasites produced new versions of truth in order to facilitate “benevolent assimilation.” But even within that framework, women asserted themselves, transferring their pedagogical practices from the home to the classroom. After the Thomasites gave the jurisdiction of teaching to the Philippine Republic, many women took over the school systems and introduced themselves as “[s]econd mothers” to the Filipino youth.<sup>65</sup> By invoking the mother role, the teacher legitimized her authority as source of knowledge in

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63. Sanchez, *supra* note 54, at 3.

64. *Id.* at 5 (citing ELIZABETH U. EVIOTA, *THE POLITICAL ECONOMY OF GENDER: WOMEN AND THE SEXUAL DIVISION OF LABOUR IN THE PHILIPPINES* (1992); LILIA QUINDOZA SANTIAGO, *SEXUALITY AND THE FILIPINA* (2007); & Charita A. de los Reyes, *Urbana at Felisa: Ideological Reproduction of Femininity in Philippine Education, 1864-1938*, *PHIL. SOC. SCI. REV.*, Volume No. 64, Issue No. 2, 49-75 (2012)).

65. See Erin L. Murphy, *Women’s Anti-Imperialism, “the White Man’s Burden,” and the Philippine-American War: Theorizing Masculinist Ambivalence in Protest*, *GENDER & SOC’Y*, Volume No. 23, Issue No. 2 (2009).

accordance with the habitus of the Filipino household, and also that of the latent power that draws from the uniquely Filipino gender consciousness.

This ideological warfare birthed Maria Clara — “a *pure soul*,’ modest, self-effacing, long-suffering.”<sup>66</sup> The conflation of the Marian image of devotion and virginity, and the caring mother role created the image of the “good” Filipina.<sup>67</sup> This imagery would later be instrumental in establishing the criteria of a truthful witness in rape cases. Girl-children, who are regarded as “pure” and “innocent,” would benefit from the resulting doctrine, but not so mature women, unless they have been deprived of reason, or their lives were undoubtedly endangered.

## 2. *People v. Taño* and its Coordinate Cases

The “woman’s honor” doctrine or the *Maria Clara* doctrine was first used as an evidentiary measure in the case of *People v. Taño*.<sup>68</sup> There, the accused was charged and convicted of robbery in band with rape.

Taño, Camina, and Caldito came upon the house of Spouses Leodegario and Herminigilda Domingo. The accused lured Leodegario out of the house by pretending to carry a message for him. When Leodegario came out, Taño pointed a rifle at him while Camina tied his hands at the back, he was then brought to the river bank. The accused went up the house where they forced open a trunk and took away some apparel and cash in the amount of ₱210.00.<sup>69</sup>

Taño then dragged Herminigilda and poised himself on top of her while his companion held her legs open. He tore her undergarments off and had intercourse with her. Camina and Caldito also followed.<sup>70</sup> The defense counsel argued against the finding of rape, there being no sufficient evidence to hold such, the examining physician finding nothing in relation to Herminigilda’s private parts.<sup>71</sup> The Court held that Herminigilda’s testimony that Taño hit her in the lap and had intercourse with her “is corroborated by

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66. Sanchez, *supra* note 60, at 7.

67. Jeane C. Peracullo, *Maria Clara in the Twenty-first Century: The Uneasy Discourse between the Cult of the Virgin Mary and Filipino Women’s Lived Realities*, RELIGIOUS STUD. & THEOLOGY, Volume No. 36, Issue No. 2, 143-47 (2017).

68. *Amarela*, G.R. Nos. 225642-43, at 7 (citing *People v. Taño*, 109 Phil. 912 (1960)).

69. *Id.* at 913.

70. *Id.* at 914.

71. *Id.*

the finding of a contusion on her left thigh and of a coloration of her ‘panty’ which was produced to the [trial] court. Besides, the offended party expressly declared that Taño was able to have carnal knowledge of her.”<sup>72</sup> In lending credence to Herminigilda’s narration, the Court declared that

[i]t is [a] well-known fact that women, especially Filipinos, would not admit that they have been abused unless that abuse had actually happened. This is due to their natural instinct to protect their honor. We [cannot] believe that the offended party would have positively stated that intercourse took place unless it did actually take place.<sup>73</sup>

In upholding the conviction, the Court also took notice of the immediacy with which Herminigilda reported the incident. Said the Court, “[t]he imputation of rape is not, therefore, the product of fabrication, because no appreciable time had elapsed between the commission of the rape and the execution of the affidavit.”<sup>74</sup>

As early as 1935, however, the Court had already placed in jurisprudence the basis for the doctrine discussed above. In the case of *People v. Luague*,<sup>75</sup> which was penned by Justice Claro M. Recto, the accused husband and wife were made to answer for the death of Paulino Disuasido who came upon the spouses’ house and attempted to rape the wife while her husband was away.<sup>76</sup> In her efforts to dissuade Paulino from his evil motives, the wife mortally wounded him, resulting in his death.<sup>77</sup> The issue in this case is whether self-defense served to exempt the wife from criminal liability.<sup>78</sup> The Court held in the affirmative, citing the commentary of Salvador Viada and a decision of the Supreme Court of Spain, *viz* —

[A]s stated by a commentator of note, ‘aside from the right to life on which rests the legitimate defense of our person, we have the right to property acquired by us, and the right to honor which is not the least prized of man’s patrimony.’ ... ‘Will the attempt to rape a woman constitute an aggression sufficient to put her in a state of legitimate defense?’ asks the same commentator. ‘We think so,’ he answers, ‘inasmuch as a woman’s honor cannot but be esteemed as a right as precious, if not more, than her very existence; this offense, unlike ordinary slander by word or deed

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72. *Id.*

73. *Id.* at 914-15.

74. *Taño*, 109 Phil. at 914.

75. *People v. Luague*, 62 Phil. 504 (1935).

76. *Id.* at 506.

77. *Id.*

78. *Id.*

susceptible of judicial redress, is an outrage which impresses an indelible blot on the victim, for, as the Roman Law says: *quum virginitas, vel castitas, corrupta restitui non potest* (because virginity or chastity, once defiled, cannot be restored). It is evident that a woman who, thus imperiled, wounds, nay kills the offender, should be afforded exemption from criminal liability provided by this article and subsection since such killing cannot be considered a crime from the moment it became the only means left for her to protect her honor from so great an outrage.<sup>79</sup>

The Court eventually overturned Natividad's conviction and rejected the theory of the prosecution that Natividad and Wenceslao were co-authors of the crime charged.<sup>80</sup>

In the above cases, the Court held as standing doctrine the right to honor and reputation, not only of the woman, but her immediate circle as well. The pronouncements put premium upon the value of womanhood and virginity. They spring from a social and cultural consciousness of who the ideal Filipina is. These pronouncements on the nature of women and womanhood are informed by the image of a "good" Filipina, i.e., who a Filipina should be in order for her to be believable — fiercely devoted to her husband and/or her family, and values her chastity above all. These are conceptions of women and womanhood reflective of the social and cultural milieu in which the judgments were promulgated. Though not necessarily wrong, these conceptions alienate a large portion of women.

### *B. Application by the Courts*

In her previous work, the Author made the finding that

[m]ost of the cases [which cited the *Maria Clara* doctrine or an iteration thereof] accorded credibility to the offended parties mainly because they were a 'minor,' 'of tender age,' 'young and immature' or 'not yet exposed to the ways of the world.'

...

[T]he offended parties ... have been further attributed with the following motivations for telling the truth[:] ' ... shame and embarrassment to which they would be exposed if the matter about which they testified were not true[ ... ] the risk of undergoing a trial despite the fact that they are

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79. *Id.* at 507 (citing I VIADA, 172-73 (5th ed.)).

80. *Id.* at 512.

expected to be ‘perverted,’ subjected to scandal[,] and stigmatized during the proceedings.<sup>81</sup>

...

In rape and sexual assault cases, the [C]ourt’s decisions have been replete with comparisons between the expected response or behavior from a girl and that of a mature woman.<sup>82</sup>

These observations led the Author to conclude that

[a]n even more serious problem in rape and sexual assault cases [ ] is the tendency to measure the standard of credibility of an offended party only within already established parameters of who is a truthful witness, according to stereotyped attributes found in previous court decisions. In other words, victims who do not fit the stereotype of a credible witness find themselves with the *onus* of showing additional proof in order to qualify as credible.<sup>83</sup>

The propensity for discrediting the witness for not fitting the mold was most recently displayed in the case of *Tionloc*. There, the Court held as incredible the offended party’s accusation of rape partly because she was older than the accused.<sup>84</sup> There was also an allusion of fault on the offended party because of her prior acts, i.e., her act of allowing herself to get drunk and pass out with the accused.<sup>85</sup> But perhaps most shocking is the Court’s pronouncement that “it would be unfair to convict a man of rape committed against a woman who, after giving him the impression through her unexplainable silence of her tacit consent and allowing him to have sexual contact with her, changed her mind in the middle and charged him with rape.”<sup>86</sup>

As earlier discussed in this Article, one of the techniques employed to escape criminal liability for rape is discrediting the victim who, in many instances, happens to also be the only witness to the crime. Because of the many rape cases of this nature that go up on review, the Court laid down the following guidelines for appellate courts in appreciating the evidence adduced in a prosecution for the crime of rape:

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81. Sta. Maria, *supra* note 11, at 6–9 (citing *Tejero*, 674 SCRA; *Salvador*, 760 SCRA; *Biala*, 775 SCRA; *Llanas, Jr.*, 622 SCRA; *Estrada*, 610 SCRA; *Relanes*, 648 SCRA; *Tolentino*, 695 SCRA; *Baraoil*, 676 SCRA; & *Buca*, 771 SCRA).

82. Sta. Maria, *supra* note 11, at 11.

83. *Id.* at 9.

84. *Tionloc*, 818 SCRA at 13.

85. *Id.* at 13–14.

86. *Id.* at 13.

- (1) That an accusation for rape can be made with facility, is difficult to prove, but more difficult for the person accused, though innocent, to disprove;
- (2) That in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and[,]
- (3) That the evidence for the prosecution must stand or fall on its own merits [ ] and cannot be allowed to draw strength from the weaknesses of the evidence for the defense.<sup>87</sup>

These rules on appreciation of evidence do not deviate from the general guidelines common to the prosecution and review of other crimes. Being consistent with the Constitutional presumption of innocence,<sup>88</sup> the burden is upon the prosecution, and therefore the offended party, to prove that there was a crime and that the accused is guilty thereof. The *Maria Clara* doctrine, on the other hand, raises a presumption of credibility in favor of the victim founded upon the various stereotypes attributed to her by the court.

That the *Maria Clara* doctrine has been applied in a manner that perpetuates judicial stereotypes, and that, in its current iteration, would seem inconsistent with the guidelines laid down above, triggered the move towards its abandonment.

### *C. Advocating for Abandonment in People v. Amarela*

#### 1. The Case

The *Amarela* case was decided by the Third Division on 2 February 2018. It caused some commotion among legal circles for a statement made therein. Some opined that *Amarela* had reversed a long-standing doctrine in the prosecution of rape cases. However, it could not have done so, because it was decided by a Division and not the *En Banc*,<sup>89</sup> and because the supposed abandonment of the *Maria Clara* doctrine was not the *lis mota* of the case.<sup>90</sup>

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87. *People v. Agalot*, G.R. No. 220884, Feb. 21, 2018, at 6, available at <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/february2018/220884.pdf> (last accessed Nov. 30, 2018).

88. PHIL. CONST. art. III, § 4, ¶ 2.

89. PHIL. CONST. art. VIII, § 4, para. 3.

90. *In the Matter of the Brewing Controversies in the Elections of the Integrated Bar of the Philippines*, 696 SCRA 8, 38 (2013) & *The City of Manila v. Entote*,

The factual milieu of *Amarela* begins, as with many cases of its nature, with a he-said-she-said. The Prosecution presented evidence to support the narrative that AAA was raped by Amarela and Racho on two separate occasions in a single night. According to AAA, she was on her way to the ladies' room coming from watching a beauty contest.<sup>91</sup> When she was near the basketball courts, she was stopped by Amarela who punched her, undressed her, and penetrated her, which ordeal only ended because of the timely intervention of some men.<sup>92</sup> Her rescuers brought her to a hut, trapped her there and manifested that they had bad intentions with her.<sup>93</sup> She fled the scene and proceeded to the house of Godo Dumandan who brought her to the Racho residence.<sup>94</sup> Racho was instructed by his mother to bring AAA to her aunt's house.<sup>95</sup> On the way there, Racho brought AAA to a shanty, boxed her, undressed her, and inserted his penis into her vagina.<sup>96</sup> Racho left, AAA went home alone.<sup>97</sup>

Amarela testified for himself saying that he met AAA that afternoon, but their interaction consisted of AAA asking him if he knew a certain Eric Dumandan.<sup>98</sup> Thereafter, Amarela went on to drink with his friends.<sup>99</sup> He had no recollection of other events because he woke up the next day.<sup>100</sup> Racho, on the other hand, confirmed that AAA went to their house with Godo Dumandan.<sup>101</sup> She was crying because she said she was raped by three men at the pineapple plantation.<sup>102</sup> Racho also confirmed that he accompanied AAA to go to her aunt's house, but denied raping her.<sup>103</sup> Instead, what happened, according to him, was that AAA wanted to go

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57 SCRA 497, 508-09 (1974) (citing *Morales v. Paredes*, 55 Phil. 565, 567 (1930)).

91. *Amarela*, G.R. Nos. 225642-43, at 2.

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.* at 3.

96. *Id.*

97. *Amarela*, G.R. Nos. 225642-43, at 3.

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. *Amarela*, G.R. Nos. 225642-43, at 4.

home to Ventura, which endeavor she did on her own as Ventura was already far away from their house.<sup>104</sup>

The Regional Trial Court found AAA's testimony to be clear, positive, and straightforward, saying that the accused's denial could not prevail over the positive identifications of AAA.<sup>105</sup> Amarela and Racho were convicted.<sup>106</sup> The Court of Appeals affirmed the decision of the trial court, lending great weight to the assessment made by the trial court of AAA.<sup>107</sup>

The issue brought before the Court is whether Amarela and Racho are guilty of raping AAA. This was answered in the negative. The Court said,

[a]lthough we put a premium on the factual findings of the trial court, especially when they are affirmed by the appellate court, this rule is not absolute and admits exceptions, such as when some facts or circumstances of weight and substance have been overlooked, misapprehended, and misinterpreted.

We follow certain guidelines when the issue of credibility of witnesses is presented before us, to wit:

*First*, the Court gives the highest respect to the RTC's evaluation of the testimony of the witnesses, considering its unique position in directly observing the demeanor of a witness on the stand. From its vantage point, the trial court is in the best position to determine the truthfulness of witnesses.

*Second*, absent any substantial reason which would justify the reversal of the RTC's assessments and conclusions, the reviewing court is generally bound by the lower court's findings, particularly when no significant facts and circumstances, affecting the outcome of the case, are shown to have been overlooked or disregarded.

And *third*, the rule is even more stringently applied if the CA concurred with the RTC.

After a careful review of the records and a closer scrutiny of AAA's testimony, reasonable doubt lingers as we are not fully convinced that AAA was telling the truth. The following circumstances, particularly, would cast doubt as to the credibility of her testimony: (1) the version of AAA's story appearing in her affidavit-complaint differs materially from her testimony in court; (2) AAA could not have easily identified Amarela because the crime

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104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

scene was dark and she only saw him for the first time; (3) her testimony lacks material details on how she was brought under the stage against her will; and (4) the medical findings do not corroborate physical injuries and are inconclusive of any signs of forced entry.

...

The female must not at any time consent; her consent, given at any time prior to penetration, however reluctantly given, or if accompanied with mere verbal protests and refusals, prevents the act from being rape, provided the consent is willing and free of initial coercion.

Although Amarela or Racho did not raise consensual intercourse as a defense, we must bear in mind that the burden of proof is never shifted and the evidence for the prosecution must stand or fall on its own merits. Whether the accused's defense has merit is entirely irrelevant in a criminal case. It is fundamental that the prosecution's case cannot be allowed to draw strength from the weakness of the evidence for the defense.

...

We find it odd that AAA was not brought to the police right after she arrived at Godo Dumandan's house to seek help. Instead, she was brought to the Racho residence where she told Neneng Racho what happened. Again, instead of reporting the incident to the police, AAA insisted that she be brought to her aunt's house nearby. This is way beyond human experience. If AAA had already told other people what happened, there was no reason for her not to report the incident to the proper authorities.

...

The prosecution in this case miserably failed to present a clear story of what transpired. Whether AAA's ill-fated story is true or not, by seeking relief for an alleged crime, the prosecution must do its part to convince the court that the accused is guilty.<sup>108</sup>

The Court acquitted Amarela and Racho.

## 2. The Advocacy and Its Effect

The Court, speaking through Justice Martires, laid the foundation of its ruling in this wise —

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108. *Id.* at 8–9 & 16–8 (citing *People v. Nerio, Jr.*, 763 SCRA, 527 (2015); *People v. Regaspi*, 769 SCRA (2015) (citing *People v. Cabungan*, 689 SCRA 236, 247 (2013)); *People v. Pareja*, 714 SCRA 131, 147 (2014); *People v. Butiong*, 659 SCRA 557, 568 (2011); *People v. Cruz*, 725 SCRA 564, 616 (2014); *People v. Borneo*, 220 SCRA 557, 567 (1993); & *People v. Garcia*, 349 SCRA 67, 72 (2001)) (emphases supplied).

More often than not, where the alleged victim survives to tell her story of sexual depredation, rape cases are solely decided based on the credibility of the testimony of the private complainant. In doing so, we have hinged on the impression that *no young Filipina of decent repute would publicly admit that she has been sexually abused, unless that is the truth, for it is her natural instinct to protect her honor*. However, this misconception, particularly in this day and age, not only puts the accused at an unfair disadvantage, but creates a travesty of justice.

...

This opinion borders on the fallacy of *non [sequitur]*. And while the factual setting back then would have been appropriate to say it is natural for a woman to be reluctant in disclosing a sexual assault; today, we simply cannot be stuck to the *Maria Clara* stereotype of a demure and reserved Filipino woman. We, should stay away from such mindset and accept the realities of a woman's dynamic role in society today; she who has over the years transformed into a strong and confidently intelligent and beautiful person, willing to fight for her rights.

In this way, we can evaluate the testimony of a private complainant of rape without gender bias or cultural misconception. It is important to weed out these unnecessary notions because an accused may be convicted solely on the testimony of the victim, provided of course, that the testimony is credible, natural, convincing, and consistent with human nature and the normal course of things. Thus, in order for us to affirm a conviction for rape, we must believe beyond reasonable doubt the version of events narrated by the victim.<sup>109</sup>

What does this mean? Though not controlling for the reasons stated in the beginning of this subsection, this pronouncement is persuasive. The

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109. *Amarela*, G.R. Nos. 225642-43, at 7-8 (citing *People v. Gan*, 46 SCRA 667 (1972); *People v. Sarmiento*, 94 SCRA 944, 951 (1979); *People v. Gamez*, 124 SCRA. 260, 270 (1983); *People v. Quidilla*, 166 SCRA 778, 788 (1988); *People v. Fabro*, 191 SCRA 386, 394 (1990); *People v. Patilan*, 197 Phil. 354, 366 (1991); *People v. Esquila*, 254 SCRA 140, 146-47 (1996); *People v. Manahan*, 315 SCRA 476, 487 (1999); *People v. Dreu*, 334 SCRA 62, 69 (2000); *People v. Durano*, 519 SCRA 466, 478-79 (2007); *People v. Madsali*, 611 SCRA 596, 608 (2010); *People v. Zamoraga*, 544 SCRA 143, 151 (2008); *People v. Achas*, 595 SCRA 341, 349-50 (2009); *People v. Banig*, 679 SCRA. 133, 142-43 (2012); *People v. Gahi*, 717 SCRA 209, 227 (2014); & *People v. Pitalla*, 806 SCRA 680, 690 (2016)).

decision, as part of jurisprudence, becomes law of the land,<sup>110</sup> and may be pleaded, with substantial effect, as a defense in rape prosecutions.

### 3. The Problem with the *Amarela* ruling

The first problem with the *Amarela* case is the suggestion that the *Maria Clara* doctrine has been applied to all classes of victims of rape and sexual abuse. This is not the case. Remember, the *Maria Clara* doctrine is founded upon the perception that a good Filipino woman will not come forward with accusations of rape if the same did not happen. Conformity with the ideal of a good Filipino woman is thus a prerequisite to the application of the doctrine. Thus, it applies mostly in cases where the victim is a girl child or a *barrio* lass. The Court has sparingly applied it to mature women.

Second, while the propriety of accepting “the realities of a woman’s dynamic role in society today” is conceded, the net effect of abandonment does not necessarily flow from such premise. Pushed to its logical end, the argument being forwarded reads thus — Because women are moving away from the *Maria Clara* archetype of being meek and reserved, an accusation of rape or sexual assault should be measured against the general rules of appreciation of evidence. True, meekness and reservation should not translate to greater credibility, but to subject a victim to the same rigorous interpellation and to place upon her a similar burden as that carried by one who cries foul for theft or *estafa* or malicious mischief is to negate the trauma suffered by the victim. The absolute abandonment advocated here fails to appreciate the nature of rape as a crime, the nuances of gender relations, and the psychology of trauma in sex crimes.

## IV. RE-FOUNDING THE *MARIA CLARA* DOCTRINE

What is to be done, then? The *Maria Clara* doctrine should not be abandoned. It must instead be uniformly applied, removed from its patriarchal origins, and replanted as (a) a doctrine that embodies the experiences of women, (b) a doctrine that strengthens our Anti-Rape laws by encouraging victims to come forward and tell their stories, and (c) a rule of evidence consistent with our international obligations and domestic legislation on women’s rights to freedom from gender bias and discrimination. Women who come forward to speak of the violence committed against them should be believed. Their credibility should be measured against the varied experiences of women who had gone through

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110. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Act No. 386, art. 8 (1949).

the same ordeal as they have, cognizant of the trauma the rape brings and the psychological effects caused by its subsequent narration. When she comes forward and says, “I did not consent,” premium must be put on her testimony and the *onus probandi* of proving the incredibility of the events so narrated and/or the fact of consent should fall upon the accused. Here, there is no presumption of rape, but a presumption of non-consent.

*A. As a Doctrine Consistent with the Identity, Hopes, and Ideals of Filipino Women*

It has been suggested that “Filipino women are neither weak nor passive.”<sup>111</sup> True, but it must be noted that there is no single defining characteristic of the Filipino woman. Society’s understanding of rape as a crime and of the credibility of the victims should not be a function of our perceptions and conceptions of what a woman should be. Every woman should be respected and her stories heard regardless of who or what she is.

In recalibrating the *Maria Clara* doctrine, any particular mold which essentializes what is truthful testimony, is removed from the equation. Recognizing the non-existence of any one particular definitive characteristic broadens the horizon for every woman, for every Filipina. In doing so, the Court shall breathe life into the Filipino’s commitment as a people towards empowering women. The following provisions in the Philippine Constitution guide the careful optimism upon which the Authors anchor the re-founding of the *Maria Clara* doctrine:

SECTION 14. The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.

...

SECTION 14. The State shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation.<sup>112</sup>

In short, a woman should be believed on the strength of her own testimony, without regard to her manner of dressing, or the fact that she is

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111. Peracullo, *supra* note 67, at 149.

112. PHIL. CONST. art. II, § 14 & art. XIII, § 14.

no longer a girl-child, or whether she drinks heavily, and the number of sexual partners she has had, and A person should not be forced into a mold in order for them to merit credibility when they say that they have been wronged. The uniformity of application, albeit nuanced, of the *Maria Clara* doctrine sought here removes it from its patriarchal origins and recognizes the diversity of women and the various ways they express themselves and the many ways they react to trauma.

*B. As a Doctrine that Strengthens the Philippines' Anti-Rape Legislations*

Two fundamental principles of criminal law are invoked hereunder. *First*, rape is among those peculiar set of crimes where those involved are only the victim and the accused; thus, the victim's testimony must be given great weight. *Second*, the moral character of the victim is immaterial in the prosecution and conviction of the accused.<sup>113</sup>

In discussing the first principle, the Court has attached a troubling caveat, *viz* —

The peculiar nature of rape is that conviction or acquittal depends almost entirely upon the word of the private complainant because it is essentially committed in relative isolation or even in secrecy, and it is usually only the victim who can testify of the unconsented coitus. Thus, the long[-]standing rule is that when an alleged victim of rape says she was violated, she says in effect all that is necessary to show that rape has indeed been committed. Since the participants are usually the only witnesses in crimes of this nature and the accused's conviction or acquittal virtually depends on the private complainant's testimony, it must be received with utmost caution. It is then incumbent upon the trial court to be very scrupulous in ascertaining the credibility of the victim's testimony. Judges must free themselves of the natural tendency to be overprotective of every woman claiming to have been sexually abused and demanding punishment for the abuser. While they ought to be cognizant of the anguish and humiliation the rape victim goes through as she demands justice, judges should equally bear in mind that their responsibility is to render justice according to law.<sup>114</sup>

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113. *People v. Edualino*, 271 SCRA 189, 199 (1999) (citing *People v. Barrera*, 262 SCRA 63 (1996)).

114. *People v. Patentes*, 716 SCRA 106, 108 (2014) (citing *People v. Macapanpan*, 401 SCRA 104, 105 (2003); *People v. Baltazar*, 329 SCRA 378, 387 (2000); *People v. Dumaguing*, 340 SCRA 701, 709-10 (2000); *People v. Gallo*, 284 SCRA 590, 612-13 (1998); *People v. Babera*, 332 SCRA 257, 265 (2000); & *People v. Alvario*, 275 SCRA 529, 537 (1997)).

There is an implication that successful prosecutions might have been tainted with the “natural tendency [of judges] to be overprotective.”<sup>115</sup> It implies that the credibility of a woman’s testimony is facilitated by patriarchal protectiveness. In reality, however, this so-called “patriarchal protectiveness” is triggered only when the victim has already subscribed to the stereotype of who is a credible witness. Decisions should instead be anchored on respect for the dignity of the woman and recognition of the heinous nature of the crime perpetrated against her. More than asking for protection, a victim comes to court to seek justice and redress. She will always come to ask the court’s help to remedy a violation committed against her. Hence, her testimony should be evaluated according to the standards of due process but with due regard to the sensitivities that an assault on one’s person and bodily integrity necessitates. This is true of torture, enforced disappearances, and especially of rape and sexual assault of women, who suffer stigma and shame even while in the process of accessing justice.

Corollary to this, the Court, in discussing enforced disappearances — one among those classes of crimes done in secret under which rape is considered a part — has said that

it logically holds that much of the information and evidence of the ordeal will come from the victims themselves, and the veracity of their account will depend on their credibility and candidness in their written and/or oral statements. Their statements can be corroborated by other evidence such as physical evidence[.]<sup>116</sup>

In a similar way, rape is endured under the most deafening silences. There are usually no corroborating witnesses. Hence, the *Maria Clara* doctrine should be reworked in recognition of this reality. The victim should be believed, not because she is meek or reserved or pure but because, often, she is the only witness to her own defilement. This leads to the second principle.

The testimony of the victim should not be attacked on grounds external thereto. “What were you wearing?” “Were you drinking?” “Are you a party girl?” “How many sexual partners have you had?” are questions that have no bearing on one’s credibility. Still, these are found in the Court’s decisions.<sup>117</sup> The abandonment of the former conception of the *Maria Clara*

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115. *Patentes*, 716 SCRA at 109.

116. *Secretary of National Defense v. Manalo*, 568 SCRA 1, 48-49 (2008) (citing *Ortiz v. Guatemala*, Case No. 10.526, Report No. 31/96, Inter-Am.C.H.R., OEA/Ser.L/V/II.95 Doc. 7 rev., 332 (1997)).

117. *See, e.g., Tionloc*, 818 SCRA.

doctrine also does away with the harm perpetrated against the anti-Maria Claras, those who do not fit the archetype.

Adherence to the above principles under the re-founded doctrine serves to strengthen our Anti-Rape legislations by encouraging victims to come forward, assuring them that they will not be stoned or that their personhood will not be collaterally attacked. This is a seminal step in restoring the faith of rape and sexual abuse victims in the law.

*C. As a Rule of Evidence Consistent with the Philippines' International Obligations Under the CEDAW and Domestic Legislation on Eliminating Discrimination Against Women and Gender Bias*

As it stands, the *Maria Clara* doctrine is rooted in a “law, regulation[,] custom[,] and practice [that] constitute discrimination against women,”<sup>118</sup> which the Philippines, as a signatory to the CEDAW, promised to abolish or modify through appropriate measures.<sup>119</sup> More precisely, the current formulation of the doctrine constitutes judicial stereotyping or the

practice of judges ascribing to an individual specific attributes, characteristics or roles by reason only of her or his membership in a particular social group. It is used, also, to refer to the practice of judges perpetuating harmful stereotypes through their failure to challenge stereotyping, for example by lower courts or parties to legal proceedings.<sup>120</sup>

In discriminating against victims who are not reminiscent of Maria Clara, the courts have failed in its duty to administer justice. As a State Party to the CEDAW, the Philippines committed itself to

take all appropriate measures [ ] [t]o modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women[.]<sup>121</sup>

Appurtenant to the above mandate, the Philippine legislature enacted the Magna Carta of Women, which provides that “[t]he State shall ensure that all women shall be protected from all forms of violence as provided for in

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118. Convention on the Elimination of All Forms of Discrimination Against Women art. 2 (f), *opened for signature* Mar. 1, 1980, 1249 U.N.T.S. 13.

119. *Id.*

120. Cusack, *supra* note 10, at 2.

121. Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 44, art. 5 (a).

existing laws. Agencies of government shall give priority to the defense and protection of women against gender-based offenses and help women attain justice and healing.”<sup>122</sup> In realizing its domestic and international obligations, the State, including the judicial machinery, must endeavor to create a safe space for women to tell their stories. In remaking the *Maria Clara* doctrine as above, the Court opens avenues for women to access justice.

This is in opposition to the alternatives presented alongside the suggestion forwarded, i.e., to abandon the doctrine *in toto*, or to keep the *status quo*. As already discussed, the *status quo* discriminates by “othering” women and discrediting the un-Maria Clara. A total abandonment also translates to injustice because it fails to account for the experience of every woman in the prosecution of rape and other forms of sexual abuse. An abandonment of this kind stymies any progress made in legislation by silencing women altogether.

#### V. CONCLUSION

As explained by Atty. Venus V. Lique, who did her Juris Doctor thesis on the Anti-Rape Law of 1997, this presumption of non-consent was intended by the legislature. She expounds thus —

Senator Leticia Ramos-Shahani wanted to push for a law that will create a presumption of rape on the basis of the prosecution evidence that the victim did not consent to the sexual intercourse as manifested by physical acts of resistance or the incapacity of the offended party to make a valid consent. Such position was met heavily by disagreement on the ground that the same will be violative of the constitutional presumption of innocence of the accused. If allowed to be passed, the law will only require that evidence of resistance or non-consent be offered by the prosecution and the burden of proving innocence will be shifted to the accused. As a workable solution, they have agreed that the law will create a presumption of non-consent if evidence of any overt physical act, in any degree, or the fact that the offended party is incapable of giving a valid consent, is offered in court. The latter solution is ideal considering that it does not violate the presumption of innocence but only creates a presumption of non-consent. The wording of the law, however, is not reflective of the purpose.<sup>123</sup>

Should the fact that the wording of the law failed to reflect the legislative purpose frustrate our efforts at arguing for the attachment of the presumption under a doctrinal rule? The provision of the presumption is a matter of

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122. An Act Providing for the Magna Carta of Women [The Magna Carta of Women], Republic Act No. 9710, § 9 (2008).

123. Lique, *supra* note 26, at 176-77.

substantive law, and thus cannot be meddled with except by the political departments of the government. The fullness of our efforts can only be realized when the halls of Congress heed the call of women and their allies for greater and better protection against all forms of violence committed against them.

In the interim, a reworking of the doctrine may be had as a matter of judicial reform, under procedural rules, specifically under the rules and doctrines governing the gathering, reception, and admission of evidence. The Court has already taken judicial notice of the trauma caused on the victim by rape prosecutions.<sup>124</sup> A viable re-founding of the *Maria Clara* doctrine would mean that the trial for the crimes of rape and other forms of sexual violence should be controlled in a manner that the credibility of the offended party should not be impugned and her testimony discredited on grounds that do not relate to the fact of consent. This would mean that her character cannot be the subject of cross examination, nor should her sexual history.

In deciding cases, judges and justices must be cognizant of their biases and stereotypes, move away from them, and decide a case with neutrality and impartiality. In deciding whether to believe a victim, factors such as her being young, meek, or reserved, her appearance of purity, chastity, or virginity, or her sexual deviance, independence, and strong personality should be beyond a judge's inquiry. That the Filipina today is dynamic, independent, and strong-willed should not work injustice against her. What *Amarela* seeks to do is to discredit — even punish — the Filipina because of her constitution and resolution, for living her life. She should be believed whether she is dynamic or reserved, strong-willed or meek, whether she is Maria Clara, or Sisa, or Hermana Pule. These recommendations are within the province of the judiciary. They are matters of procedure. They are matters subject to a shift in paradigm and pedagogy among the members of the bench and the bar.

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124. *Gersamio*, 762 SCRA at 406.