

UPHOLDING THE RIGHTS OF CRIME VICTIMS: A PHILIPPINE STANDPOINT

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I. INTRODUCTION

The nature of the Philippine justice system ultimately reduces the role of the complaining victim into a mere witness who is supposed to provide the evidence that is needed in order to prove the case. Thus, in the prosecution of the offence, the complainant's role is limited to that of a witness for the prosecution.¹ Being a mere witness to the case, the risk of retraumatization can become high. Various stakeholders like the law enforcement officers, prosecutors and judges tend to inadvertently forget that the victims have various rights, other than being compensated as a form of support, that must be recognized and upheld. Victims have to endure successive interviews and examinations of their harrowing experiences from the offenders, starting from the law enforcement officer to the prosecutor and finally before the trial court. When the victim is a child, another interview with a social worker may be added to the list. While the Philippines has recognized the necessity of giving justice to the victims of crimes and not just bringing the perpetrators to the justice system, certain factors still deter its full realization.

II. CURRENT PROTECTIVE MEASURES FOR VICTIMS OF CRIMES

A. Restitution and Victim Support

A Victims Compensation Program² exists in the country in recognition of the need to compensate victims for the impact or even trauma that the commission of a violent crime³ against them may have caused and even grants compensation for victims of unjust imprisonment. A maximum amount of Ten Thousand Pesos (Php⁴ 10,000.00) may be given as compensation to a qualified claimant for expenses incurred for hospitalization, medical treatment, loss of wage, loss of support or other expenses directly related to injury.

A Rape Crisis Center⁵ has been established to provide rape victims with psychological counselling, medical and health services, free legal assistance and to adopt programmes for the recovery of rape victims. Witnesses or victims of a grave felony⁶ who are subjected to threats to life or bodily injury may avail themselves of the Witness Protection Program⁷ of the country. Victims of the crime of trafficking in persons have preferential entitlement under this programme.⁸

¹ City Prosecutor of the City of San Fernando, Pampanga, Region III, National Prosecution Service, Department of Justice, Philippines.

² *Yokohoma Tire Philippines Inc. v. Sandra Reyes and Jocelyn Reyes*, G.R. No. 236686, 5 Feb. 2020.

³ Republic Act No. 7309 otherwise known as "Act Creating a Board of Claims under the Department of Justice for Victims of Unjust Imprisonment or Detention and Victims of Violent Crimes and For Other Purposes", 30 Mar.1992.

⁴ Violent crimes under this law (R.A. No. 7309, Section 3-d) shall include rape and shall likewise refer to offences committed with malice which resulted in death or serious physical and/or psychological injuries, permanent incapacity or disability, insanity, abortion, serious trauma, or committed with torture, cruelty or barbarity.

⁵ Php stands for Philippine Peso. 1 USD is equivalent to PHP 51.28 based on the February 2022 exchange rate bulletin of the Bangko Sentral ng Pilipinas (central bank of the Philippines).

⁶ Sec. 3, Republic Act No. 8505, otherwise known as the "Rape Victim Assistance and Protection Act of 1988", 13 Feb. 1998.

⁷ Grave felonies are those to which the law attaches the capital punishment or penalties which in any of their periods are afflictive, Section 9, Act No. 3815, known as "The Revised Penal Code".

⁸ Republic Act No. 6981 otherwise known as the "Witness Protection, Security and Benefit Act", 24 Apr. 1991.

⁹ Section 18, Republic Act No. 9208, otherwise known as the "Anti-Trafficking in Persons Act of 2003".

For the special protection of children, the Philippines has enacted several laws addressing the vulnerabilities of the younger age groups, including the rising number of online child abuse cases. The following laws are all aimed at protecting child victims:

1. Republic Act No. 7610 or the “Special Protection of Children Against Abuse, Exploitation and Discrimination Act” declared it a State policy “to provide special protection to children from all forms of abuse, neglect, cruelty exploitation and discrimination and other conditions, prejudicial to their development; provide sanctions for their commission and carry out a programme for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation and discrimination”⁹;
2. Republic Act No. 9775 otherwise known as the “Anti-Child Pornography Act of 2009” defines and penalizes a particular form of child abuse, which is child pornography. It declares among others, to “protect every child from all forms of exploitation and abuse”¹⁰; and
3. Republic Act No. 9262 otherwise known as the “Anti-Violence against Women and their Children Act of 2004” enumerates the rights of victims to be treated with respect and dignity, to avail themselves of legal and support services from the government and to be informed of their rights and the services available to them, including their right to apply for a protection order.¹¹ In all these laws enumerated, the confidentiality of the identity of the victim is of paramount importance and is enjoined to be respected.

B. Preventing Secondary Victimization

In recognizing the need to address the peculiar needs of a child who is a victim of a crime, the Supreme Court of the Philippines enacted the Rule on Examination of a Child Witness¹² which allowed the use of live-link television testimony, screens, one-way mirrors and other devices to shield the child from the perpetrator during the testimony in court.¹³ Consistent with its objective to minimize trauma to children, a videotaped deposition presided by a judge may be done under this rule upon application by the prosecutor, counsel or guardian ad litem¹⁴ should the child victim or witness be unable to testify in open court at trial.¹⁵ On the other hand, a videotaped and audiotaped in-depth investigative or disclosure interview¹⁶ in child abuse cases may also be done and be admissible in court, subject to the following conditions:

- (a) The child witness is unable to testify in court on grounds and under conditions established under section 28 (c).
- (b) The interview of the child was conducted by duly trained members of a multidisciplinary team or representatives of law enforcement or child protective services in situations where child abuse is suspected so as to determine whether child abuse occurred.
- (c) The party offering the videotape or audiotape must prove that:
 - (1) the videotape or audiotape discloses the identity of all individuals present and at all times includes their images and voices;
 - (2) the statement was not made in response to questioning calculated to lead the child to make a particular statement or is clearly shown to be the statement of the child and not the product of improper suggestion;
 - (3) the videotape and audiotape machine or device was capable of recording testimony;
 - (4) the person operating the device was competent to operate it;

⁹ Section 2, Republic Act No. 7610.

¹⁰ Section 2 (b), Republic Act No. 9775.

¹¹ Section 35, Republic Act No. 9262.

¹² A.M. No. 004-07-SC, 21 Nov. 2000.

¹³ Sections 25-26, Rule on Examination of a Child Witness.

¹⁴ A “guardian ad litem” is a person appointed by the court where the case is pending for a child who is a victim of, accused of, or a witness to a crime to protect the best interests of the said child (Section 4 (e), Rule on Examination of a Child Witness.

¹⁵ Section 27, Rule on Examination of a Child Witness.

¹⁶ “In-depth investigative interview” or “disclosure interview” is an inquiry or proceeding conducted by duly trained members of a multidisciplinary team or representatives of law enforcement or child protective services for the purpose of determining whether child abuse has been committed (Section 4 (i), Rule on Examination of a Child Witness).

- (5) the videotape or audiotape is authentic and correct; and
- (6) it has been duly preserved.

The individual conducting the interview of the child shall be available at trial for examination by any party. Before the videotape or audiotape is offered in evidence, all parties shall be afforded an opportunity to view or listen to it and shall be furnished a copy of a written transcript of the proceedings.¹⁷

III. THE CHALLENGES

There is a certain bar between the numerous laws and promulgated rules vis-à-vis the actual implementation in different jurisdictions in the country.

A. Role of Victims in the Criminal Proceedings

1. Lack of Coordination of Victims with the Prosecutors

The role of the victims in the criminal proceedings, being reduced to mere witnesses, and the opportunity for victims to express their views and concerns in the criminal proceedings are sometimes taken for granted. In fact, these victims are merely instructed to bring the necessary pieces of evidence which may be in their custody and prepare them for their testimony in court. While their role and the procedure may be briefly explained to them, the same may not be as thorough as it should be due to lack of time and the numerous cases being prepared for trial. There are victims who are vigilant with their cases, but there are some victims who are pressed for time and money who only attend the court proceedings without coordinating with the prosecutor prior to the trial date. In fact, there are some victims who, after their testimony in court, never go back to court to look into the outcome of the case. It behoves the prosecutor to inform them to at least be apprised of the disposition of the case. It may seem as though it is the choice of the victim to be nonchalant about their case, but these victims could also need assistance in order to ascertain that they have properly moved on from the trauma caused to them and were in fact properly reintegrated back to society after such a painful experience.

2. Non-appearance/Disappearance of Witnesses

Victims often fear for their safety and retreat from prosecuting the case in exchange for a life far from their offenders. Some witnesses even just disappear for a number of reasons, despite the existence of a Witness Protection Program in the country. The disappearance of witnesses can be due to various causes, such as: a) at the initial stage of the proceedings, they have experienced revictimization due to insensitive or judgmental reactions of others that unnecessarily augmented their suffering. In sexual abuse cases, some victims have even experienced not being believed even by their own parents or relatives; b) some have either been paid or intimidated or forced to desist from the prosecution of the case; and c) other victims have simply made a rational choice to move on with their lives and forget the crime done.

B. Preventing Secondary Victimization

1. During the Investigation Stage

A criminal prosecution is initiated by the filing of a complaint to a prosecutor who shall then conduct a preliminary investigation in order to determine whether there is probable cause to hold the accused for trial in court.¹⁸ In this stage, the victim/private complainant shall be examined by the public prosecutor to determine the existence of probable cause. This procedure takes place after the victim has already been interviewed by the law enforcement officer. From these stages, the victim has to recount all the dreadful experience in order to establish the elements of the crime allegedly committed. By narrating it all over again, the victim unfortunately suffers retraumatization, only to find out that another more stressful questioning will be done during the trial stage on direct and cross-examination. The quality of the testimony may vary as well as some details may change or differ from the earlier statements.

This is even harder for child victims who refuse to talk even just at the sight of their offenders, as not all the trial courts in the country have provisions for live-link testimony or a one-way mirror. The successive

¹⁷ Section 29, Rule on Examination of a Child Witness.

¹⁸ Secretary Leila de Lima v. Mario Joel Reyes, G.R. No. 209330, 11 Jan. 2016.

interviews of victims cause retraumatization as they have to recount the distressing ordeals that have befallen them several times before they could probably be said to have proved their case. For children, this is more traumatic, which could affect their mental and psychological health. It is sometimes a challenge to refer the victims for psychological/psychiatric help since not all jurisdictions are equipped with fully trained trauma experts.

While an in-depth video interview may be done in accordance with the Rule on Examination of Children, there are no trained law enforcement officers or members of multi-disciplinary teams in all jurisdictions who can conduct the forensic interview. Some who were trained, on the other hand, have been either promoted or are no longer connected with the same office which now discontinued the in-depth video interviews during the investigation stage in some places. Some jurisdictions are conducting the interview nonetheless without a trained law enforcement officer, at the risk of such video not being admissible in evidence in court should non-compliance with the requirements set forth be ruled by the trial court.

2. During the Trial Stage

The trial stage is when the victim will be subjected to thorough direct examination and rigorous cross-examination by the defence counsel. It is a stressful situation that will bring the victim back to the harrowing experience – after several examinations/interviews have been conducted on the same victim for the very same acts. For children, this stage is doubly traumatizing. Victim-blaming, judgmental behaviour or comments are also exhibited by some, from different agencies, whether it be the judge, the prosecutor, defence counsel and others. Some victims shy away from recounting their ordeal for fear of being retraumatized. And when these witnesses have to relay it all over again in front of strangers, they suffer trauma anew.

3. Implementation of Programmes and Services in Response to Violence against Women and Children

While there are several laws and rules enacted for the protection of crime victims, programmes and services vary in each locality, depending on the zeal of the local government as well as the proper allocation of the budget for each locality. Efforts of government as well as non-governmental organizations are not integrated with each other in order to achieve a nationwide programme that may be utilized for the recovery of victims.

IV. KAREN'S CASE – A REVICTIMIZATION

Karen was an employee who was raped by a former president of a local organization of businesses in the Philippines. The rape case dragged on for eight (8) years, and the trial led to the acquittal of the accused in 2005. The trial court held, among others, that Karen should have fought off the accused who was already in his sixties, in order to prevent the rape. Karen complained to the Committee on the Elimination of Discrimination Against Women, avowing that the action of the trial court subjected her to revictimization and violated articles 2(c), 2(f), and 5(a) of the Convention on the Elimination of All Forms of Discrimination Against Women and CEDAW General Recommendation 19,¹⁹ which obliges a State to modify or abolish existing laws, regulations and practices that constitute discrimination against women. Karen averred that the decision was grounded in gender-based myths about rape and rape victims.

It was the Committee's recommendation that appropriate compensation be given to Karen, along with other recommendations for a review of existing Philippine laws. Ruling in Karen's favour, the Committee, thus, stated:

[T]he Committee finally would like to recognize that the author of the communication has suffered moral and social damage and prejudices, in particular by the excessive duration of the trial proceedings and by the revictimization through the stereotypes and gender-based myths relied upon in the judgement. The author has also suffered pecuniary damages due to the loss of her job.²⁰

¹⁹ May be easily accessed through the United Nations Human Rights website, <https://www.ohchr.org/en/hrbodies/cedaw/pages/recommendations.aspx>

²⁰ *United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*, C/46/D/18/2008, 1 Sep. 2010, p. 16, par. 8.8.

V. RECOMMENDED ACTIONS

Victim retraumatization, or secondary victimization, may be avoided in the trial stage or even the preliminary investigation stage before a prosecutor if a duly recorded forensic interview by those persons authorized and trained for the purpose can be executed in such a way that it will be admissible to the courts even in the unexpected absence of the victim in the future. Continuous training must be done in order not to disrupt the process, and the protection of the victims will be ensured on this aspect.

Information campaigns must be improved in order to apprise victims of their rights and how to make these rights accessible to them. A number of victims are still unaware of the possibility of getting compensated from the Board of Claims or even how to avail themselves of the Witness Protection Program. Victim-shaming and victim-blaming must be avoided at all costs in order to encourage the victims to stand up, be heard and protect their own rights. Convergent programmes for nationwide implementation for the prevention, protection, recovery and reintegration of crime victims must be continually developed such that it caters to each and every locality, as it applies to them.