

THE ISSUE OF CONSENT IN RAPE CASES

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PREFACE

This paper is inspired by the everyday happenings of cases read in the newspaper. Rape being most common of violence against woman, is not just sex. Rape is not shown as an ugly violent act in phonography, but the woman is depicted as eventually enjoying it and behind her cries are supposedly the moans of enjoyment and acceptance.

The reasons for rape are almost seen as due to the woman; her attire, her courage to walk at night and other instances including morality are used to prove consent on her part. Further, in the eyes of society, if an unmarried woman is raped and if it is found out that she is not a virgin at the time of the alleged rape, there will be almost automatic inclination to think that perhaps she consented.

It is due to this injustice(if the writer may say), that has led the writer to examine the state of the present law and to make, if possible appropriate proposals and suggestions .The writer feels that the state of the present law is not balanced in that it does not confer sufficient protection to the victim, leading normally, the woman holds back the charges and refuses to report the case resulting the offender usually get away scot-free.This therefore, should be putt-off as history and not as a present happenning in a civilised society today.

CHAPTER I

Introduction:

Rape like all sexual offences falls into the category of lurid crime which is often discussed in a circumspect manner and suspicious of the motives of any interviewer. This is because there are many who are curious and would go through great lengths to its sensational story.

Objective Of the Study

The purpose of this study is to look into the offence of rape in Malaysia from a legal point of view and to evaluate the law in rape trials and to scrutinize on the related aspects especially on the issue of consent.

Consent is such an important issue with which if proven the accused will be convicted and if otherwise the accused will be acquitted. The real questions here are: In what way must it be proven? Must the prosecution go behind the prosecutrix and look into her background to find consent? Or must the prosecutrix adduce evidence of torture and force to prove non-consent? Or must the court look into the relationship of the parties to decide consent?

Thus, this study is more concerned about the effect of certain rules of evidence like corroboration and impeachment on the prosecutrix in forcible rape on adult rather than statutory rape where consent is not in issue at all.

One should observe that not only rape is understudied it is remained unreported in many jurisdiction, for example in the United States Of America, for apparent reason that