Language and Rape Myths in the South: A Feminist Critical Discourse Analysis

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This essay adopts a Feminist Critical Discourse Analytic approach to the discourse of rape trials as it attempts to locate the relationship between power and gender in courtroom interrogations of witnesses. Seventy four (74) transcripts of stenographic notes of seven (7) selected resolved rape cases serve as texts for analysis. Results show that features of discourse such as repetition, reformulation, agency, and presuppositions in questions function as discursive practices/ strategies of lawyers and judges to exercise discursive control over witnesses. These discursive practices are packaged with gendered ideological frames or rape myths (e.g., tenacious resistance is required, normal conduct of a reasonable person) that turn claims of violence to sexual consent. The rape myths persist despite the efforts of the Supreme Court in correcting them, and claims of their existence are evidenced through the interdisciplinary lens of language and gender studies where workings of power are revealed, negotiated, and sustained.

Keywords: Feminist CDA, Genedered Ideological Frames, Grammar of Agency, Presuppositions, Sexual Consent

1.0 Introduction

To women rape complainants in Philippine courts, nothing can be more dehumanizing and emotionally draining than the experiences they go through in court. They are confronted with proving the truthfulness of their testimony by retelling the events and minute details of their rape. Aside from reliving violence several times in public, they face intimidation, suggestive comments, and comments on personal appearance, their attire, and their body parts (Feliciano et al., 2002). They even face sexist remarks and jokes. With these scenarios, women are said to be revictimized or to have experienced secondary victimization; they are twice victimized – first by the physical-sexual abuse and then by the blame that accompanies it. These experiences of secondary victimization have been noted and given comments by scholars of law and gender studies.

In the Philippines, legal reform movements hope to eradicate the most overt sources of patriarchal power; particularly, reforms include developments in promoting and protecting the rights of women. The Family Courts, where cases of violence (including rape) against women are tried, were established in 1997. They have exclusive jurisdiction to hear and decide cases of domestic violence against women which include physical, sexual, or psychological harm to women such as threats, coercion or deprivation of liberty in public or private life (based on the UN Declaration on the Elimination of Violence against Women). Another development in the fight for women's rights is the Anti-Rape law of 1997 or Republic Act 8353 which expanded the definition of rape and reclassified rape from a crime against chastity to a crime against persons. Moreover, during the term of Chief Justice Hilario G. Davide Jr. (1998-2005), the Committee on Gender Responsiveness of the Judiciary was created, and the Supreme Court started gender sensitivity training programs for judges and initiated other

reforms in certain rules on examination of child-witness. Justice Davide's leadership also opened the doors of Supreme Court to information and critique from non-governmental organizations and women rights advocates (Guanzon et al. 2006, 10).

An example of these critiques is a survey by Feliciano et al. (2002, 22) that identified the problems encountered by female witnesses in the courtroom or the so called "gender insensitive court procedures". Using five (5) transcripts of stenographic notes (TSNs) and interviews, Feliciano et al. (2002) observed that gender bias was evident in the questions posed by the lawyers and the judges; there were intimidation, suggestive comments, and assumptions of a typical Filipino woman as rape victim. They analysed and critiqued the contents of TSNs and discussed forms and extent of gender bias in court. Since their research intended to provide an overview of the gender sensitivity of the judicial system, Feliciano et al. (2002) admitted that their study on gender sensitivity is in its initial stage. They hope for a more in-depth and comprehensive empirical research on gender biases in the court system.

Another critique of the judicial practices in rape trials was proferred by the Women's Legal Bureau, Inc. (WLB, Inc.), a non-government legal resource organization in the Philippines that works for the defense and promotion of women's rights. WLB, Inc. published occasional papers and training manuals that tackle rape issues in the country. In "Making Sense of Rape" (1995), ten prevalent notions/presumptions about rape (e.g., rape happens to only young pretty or desirable women) were discussed based on Supreme Court decisions. In "Addressing Rape in the Legal System" (2001), there were discussions of the court process and suggestions for judicial protocol. Claims of the environment in the courtroom were also made such as "the courtroom is strange and intimidating, complex, complicated, and suppresses the truth" (WLB, Inc. 2005, 231). Research claims on gender insensitivity by the studies of Feliciano (2002) and the WLB, Inc. facilitate the discussions of gender biases in courtroom proceedings, but their claims could have been substantiated by linguistic data if specific instances of experiences of secondary victimization in the legal system were tackled using approaches to discourse.

Nevertheless, secondary victimization in the courtroom has been tackled by several language scholars in other countries. Drew (1992) emphasizes the role of talk-in-interaction in the strategies of the defense lawyer in presenting his version of events vis -à-vis the complainant's version. In his study, the complainant's version is contested by the defense lawyer's, and the latter proffers his own version which damages the complainant's claim of truth. Matoesian (1993, 1995), on the other hand, strongly argues that rape as a domination is reproduced for the second time in the courtroom. This domination happens when defense lawyers cross examine complainants using linguistic strategies that are embedded with patriarchal values. According to Matoesian , the male standard of interpreting the crime of rape is "the standard" observed in the courtroom, and because of this, victim blaming is rampant during the cross examination of defense lawyers. Likewise, Ehrlich (2001) demonstrates the many facets of secondary victimization in her analyses by providing specific instances of discourse in constructing and constituting social realities in rape case trials. Gendered ideological frames such as "utmost physical resistance", "asymmetry in interaction", and victim blaming are brought about by the strategic use of grammar of non-agency, questions, and silence by the accused and by the defense lawyer, and by the use of

misconstrued communicative signals by the complainants prior to and during the rape incident. The victims of these ideological frames are always the complainants, and the accused is advantaged and goes free of rape charges.

Drawing from these scholarly works, I offer a sociolinguistic perspective to understanding secondary victimization in rape trial proceedings by analyzing presuppositions, grammar of agency, and repetition in courtroom participants' speech exchange as linguistic features that facilitate discursive control, blaming, and other gendered ideological frames by adopting a Feminist Critical Discourse Analytic (Feminist CDA) approach.

Feminist CDA (Lazar, 2007) is Critical Discourse Analysis (Fairclough, 1995) with a feminist perspective. It follows the tradition in analysing discourse in three dimensions or layers of a communicative event: the text, the discourse practice, and the socio-cultural practice. It aims to advance a rich and nuanced understanding of the complex workings of power and ideology in discourse in sustaining (hierarchically) gendered social arrangements. According to Lazar (2007), there are five principles observed by Feminist CDA scholars: feminist analytical activism, gender as ideological structure, complexity of gender and power relations, discourse in the (de) construction of gender, and critical reflexivity as praxis.

Using Feminist CDA and its principles along with theories on speech act (Austin and Searle, 1985) and context (Hymes, 1986), and feminist legal theory (MacKinnon, 1995), the analysis takes off from the text—extracts taken from the Transcript of Stenographic Notes (TSNs) of seven (7) rape cases of RTCs in the province of Iloilo, Western Visayas to the discourse and socio-political practices.

In any legal setting, TSNs serve as the official representation of trials. Particular to the Philippine judicial context, TSNs show that judges and lawyers use English (being one of the official languages, along with Filipino, in the courtroom) while the witnesses are given options to speak English or their native language such as Hiligaynon (native language of the Ilonggos). In the selected rape cases in this essay, most expert witnesses such as the medical physicians and police officers speak English while the complainants, the accused, and other witnesses speak Hiligaynon. Court interpreters are tasked to translate with some greater degree of accuracy the testimony of the witnesses from Hiligaynon to English during the trials. However, the stenographers only note the English translation; thus, Hiligaynon utterances are not put on record. The sole means to access Hiligaynon utterances is through the audio analog tapes which are disposed if not reused. Even the stenographers' longhand notes are in English, and the TSNs are inevitably transcribed/encoded in English. However, with words which carry a distinct "Ilonggo" cultural meaning, these are quoted and retained in the transcripts. Lawyers from both parties usually object if the court interpreter's translated forms do not correspond to the witness's meaning, and the lawyers suggest a better term or phrase. The judge decides on this kind of objection. Lawyers' objections as part of the trial proceedings are likewise put on record.

Moreover, speakers, rules of interaction, settings, goals, and other elements of immediate social context are described and noted by the stenographers as ordered by the court. Although it is through the TSNs that one may have a view of what goes on in courtroom trials, certain elements of contexts such as facial expressions, contour of vocal expressions, and nuances of Hiligaynon lost in English translation may be

limitations to the analysis. Aside from the fact that the courts usually exclude the audience during a rape case trial, one is definitely not allowed to audio/video record on-going trials of rape cases. Thus, TSNs of resolved rape cases may still be one of the most useful sources of data in analysing courtroom discourse.

The TSNs and court decisions are from the Western Visayas (particularly from the province of Iloilo), the 6th of the 17 regions of the Philippines, because of the high percentage of rape incidents in the region. According to Taliño-Mendoza (2010 in www.preda.org, 4/25/2011), 3,159 rape cases were reported to the authorities countrywide in 2009, 22% higher from the 2,585 recorded over the same period in 2008. Western Visayas (429 rape incidents) is second to Manila (466) in this statistics. With this alarming number of reported rape cases in Western Visayas, it was decided that the source of data be taken from RTC branches in the 6th Judicial Region, specifically in Iloilo province where I reside.

This essay is concerned with how do discursive practices, or everyday-reality expressions/actions and dynamics of the interaction, of participants in the courtroom proceedings operate in the secondary victimization of female rape complainants. Particularly, what prevalent features of discourse are used during rape case trials? How do discursive practices construct gendered ideological frames (i.e., androcentric or sexist assumptions that masquerade as objective truths) or doctrinal myths about women as rape victims during the rape trial proceedings? How do these discursive practices and gendered ideological frames relate to the overall conduct of rape case trials in the South (Iloilo)? To answer these queries, discussion of three linguistic features - pressupositions in questions, agentive positioning, and repetition used strategically by courtroom participants is in the analysis, and the socio-political milieu of rape myths in the country is explored briefly in the conclusion.

2.0 Presuppositions in questions: Unlimited options, unconstrained choices

Presupposition is a term used by linguists to refer to propositions whose truth is taken for granted in the utterance of a linguistic expression (Green, 1996 in Ehrlich, 2001). These propositions are presumed knowledge or implicit understanding that participants need to make full sense of an utterance (Levinson, 1983). Varieties of linguistic forms have been isolated as sources of presuppositions and are designated as presupposition triggers. A presupposition trigger (e.g., “the” and “any” mentioned earlier in the previous chapter) is a lexical item or linguistic construction which is responsible for the presupposition. Examples of presupposition triggers are existential (e.g., Carla’s pen), factive (e.g., learn, know, realize), connotation or implicative, iteratives (e.g., again, anymore), temporal clauses, cleft sentences, and others.

Since presuppositions have the ability to survive negation and interrogation, according to Ehrlich (2001), they have potential consequences for the ideological work that questions do in the rape case trials. This ability to survive negation and interrogation or ability to remain constant or true under negation and interrogation makes lawyers and judges in control of certain information in their questions during trial proceedings. Since a question always contains a variable or unknown quantity, the addressee of a question (i.e., the complainant in a courtroom setting) is being asked to supply (Lyons, 1977 in Ehrlich, 2001). The act of questioning imposes the addressee the right to supply this variable. In answering, the addressee has the ability to confirm or disconfirm the proposition contained in a

question. However, questions that are presupposed by linguistic expressions are very hard to deny. Since certain information of presupposed questions is presumed and taken for granted, the addressee cannot easily or appropriately deny or question that information.

In the context of trial proceedings, the presumed truth or the "taken-for-granted" quality that presupposed questions display makes certain ideological frames (e.g., normal conduct) easily imposed. The use of presupposition as a discourse strategy in questioning has the potential to confuse witnesses and mislead hearers by inserting certain information as a given content that is new or disputed.

The following extracts illustrate in detail the question-answer sequences that reveal the unlimited options and choices that should have been pursued by complainants based on the cross examining lawyers' and judges' perceptions. These extracts evidence the rape myth, "normal conduct", as prominent gendered ideological frame. The behavior of a complainant before, during, and after rape incident most of the time serves as basis for the conviction or acquittal of an accused (Ursua et al., 2005a). If a woman is raped, she should seek help and report the rape incident as soon as she can, and display utmost resistance in her actions and speech during the rape.

The following transcription conventions are used for reference purposes: (C6-TSN2:89-91) is Case Number 6, Transcript of Stenographic Notes Number 2, Pages 89-91; **.** – points in vertical sequence means lines are omitted; and, *words in italics* – it is for emphasis; the focus of the analysis.

In her study, Ehrlich (2001) points out that TM (a cross-examining lawyer of the accused) asserts that crying out or yelling out is a natural and appropriate way of responding to real trouble. In extracts 1-4, "shouting for help" is a means to seeking help especially when a woman faces imminent physical threat. In extract 1, PL (prosecuting lawyer) offers an option to EYP (complainant) in the polar question "Did you not shout for help?" which presupposes that EYP can shout for help; however, EYP did not choose to do this.

Extract 1

PL: Did you not shout for help?

EYP: If I shout and nobody will come to me, DHL might hear me, so I was afraid. (C6-TSN2:89-91)

A similar presupposition is in the question "Did it not come to your mind to shout for help?" in extract 2. The presupposition (the complainant GL may opt to shout) is triggered by information as a memory or mental process in the clause "did it not come to your mind". DL informs GL that she may opt to shout if she wants to shout. Since GL reasons that her mouth was covered so she was not able to shout, the court (C) in this extract intervenes and raises a rising intonation question, "But not all the time that your mouth was covered by his hands, right?" with the presupposed information that GL's mouth is covered by the accused's hands at times. Yet, C informs GL that she can shout when her mouth is not covered. As C quotes GL's statement, "I do not know what to do," in the projected statement (i.e. quoting back GL's meaning) "So, everytime he rape you, you were not able to think of whatever to do?" C presupposes that there is something (an option) to consider regarding what to do when the accused rapes GL, and one of the options is to shout for help when her mouth is not covered by the accused's hand.

Extract 2

DL: *Did it not come to your mind to shout*

for help?

GL: Because he was covering my mouth and he was afraid that his son Joe will know if I shout.

C: *But not all the time that your mouth was covered by his hands, right?*

GL: I was afraid and I do not know what to do and to think anymore.

C: So, everytime he rape you, you were not able to think of whatever to do?

GL: Yes, your Honor. (C7-TSN2: 29)

GL has also even a chance to go to a police station is presupposed in DL's question with projected information, " … do you happen to pass by the Police Station located in front of a university, Iloilo City?" It is implied that when GL goes to a place (e.g. the child's school), there is a police station in the vicinity. DL informs GL that she can ask help from the police. This option to seek help and report to the police was not taken by GL "despite being free and unaccompanied."

Extract 3

DL: ... do you happen to pass by the Police Station located in front of a university, Iloilo City?

GL: Yes, sir.

DL: And despite being free and unaccompanied during this time you never thought of reporting the alleged rape committed against you at the Police Station?

GL: I was afraid. (C7-TSN2: 15-17)

Aside from seeking help and/or reporting the rape incident, "saying or doing something different" is often explored by lawyers and judges in cross examinations with the intention to inform or remind the women rape complainants that there are available options for them to work out which may be through their verbal or behavioral conduct. These options in saying or doing something different in certain strategic events of the alleged rape incidents are illustrated in the extracts that follow.

In extract 4, NM (complainant) details how the accused while in an alley offered a beer for NM to drink. She took the beer, but she refused to drink it since she was to go home. DL by asking question with nominalized information, "Did you not refuse the invitation of the accused by not pouring the beer on his head?" intends to inform NM that there is a choice to refuse the drinking of the beer by other means aside from pouring the beer on the accused's head. NM, therefore, has other options to take (e.g., run away, say a firm "no") in order to avoid impending trouble, yet she did not consider these other options.

Extract 4

DL: You said he held your hand, please demonstrate?

NM: He was holding my two (2) hands.

DL: With both of his hands also?

NM: At first his two (2) hands holding me and then he handed to me a beer for me to hold.

DL: What happened to that beer?

NM: I poured it on his head.

DL: Why did you pour on his head?

NM: Because I will not drink anymore and I am going home.

DL: Did you not refuse the invitation of the accused by not pouring the beer on his head?

NM: I declined, but he insisted because he was also drunk at that time. (C4-TSN4: 10-11)

In extract 5, a series of rising intonation questions are stated by the judge

(C), "You did not tell him why he was doing that to you!" presupposes that the accused has some reason "why" he allegedly raped the complainant, MA. "…You did not tell him that his intention will destroy your relationship?" presupposes that the accused's intention (to rape MA) will destroy their relationship as good (pleasant) neighbors. C suggests to MA that there is possibility of a change of mind on the part of the accused if MA only asked the accused of his reason of raping her, and if only MA expressed her intention of keeping a good relationship with him as a neighbor.

Extract 5

C: You did not tell him why he was doing that to you! You did not tell him that his intention will destroy your relationship?

MA: I told him your Honor but he told me that this was already his long desire to get me. (C2-TSN4:34-37)

To include in the list of options not pursued by women rape complainants and explored by lawyers and judges in cross examinations are options related to utmost resistance standard or requirements to which Schulhofer (1998 in Ehrlich, 2001) refers to as "to make sure women rape complainants had been unwilling by showing physical resistance or usually expressed as earnest resistance or even resistance to the utmost." That is, only if a woman resisted physically and to the utmost could a man be expected that his actions were against her will. In extracts 6-8 women rape complainants in the selected cases of this essay go through segments of the cross examination where they are informed or reminded by lawyers and judges that they should have opted to maximize the parts of the body to physically resist (e.g. fight back, scratch, pull the head) their assailant, and (in other extracts not included here) to prevent the pulling off of their clothes (short pants) by wiggling the hips or spreading the legs. These options not pursued have been the reasons why the court constructs the events in rape as consensual.

In extract 6, DL's agreement statement presupposes that VM (complainant), "…was free from the hold of the accused" and the accused slammed her on the bed. These presuppositions are triggered by the subordinate conjunction "that" and temporal adverb "when." DL informs VM that she had chances to fight back or to flee from the accused because it was not all the time that the accused was holding her or taking total control of the events. DL implies that VM opted not to pursue options of resistance and escape.

Extract 6

DL: *There was a particular time that you were free from the hold of the accused when he slammed you on the bed, am I correct?*

VM: Yes, sir. (C3-TSN3: 20-21)

In extract 7, DL evaluates MA's (complainant's) means of utmost physical resistance. DL's "how" question (substantial information can be assumed, but there is some freedom in the information to be given), "How many kick did you do?" presupposes that MA kicked the accused, and that she may opt to kick him several times. However, when MA answers that she tried to kick the accused, DL's agreement statement, "So meaning you were not able to kick him is that correct?" highlights MA's lack of utmost resistance because she failed to do the act (to kick). DL's wh-question (what) with embedded information, "…what was your hands doing at that time?" presupposes that MA's hands can do "something", and this "something" stands for enumerable options that MA should have pursued. MA, however, reasons that she did use her hands by scratching the back of the accused. At this point of the question-answer sequence, DL informs MA that scratching

may be done gently or with force; thus, he asks an either/or question, "Was the scratching done gently or with force Madam Witness?", and he concludes with a rising intonation question, "So meaning it was not an embrace?", making an impression that sex between MA and the accused may have been consensual. Possible options that should have been pursued (laid down by DL) are to scratch the accused's face instead of his back and to pull the accused's head away instead of scratching his back.

Extract 7

DL: How many kick did you do?

MA: I tried to kick him with my both feet but I could not kick him because he was on top of me.

DL: So meaning you were not able to kick him is that correct?
MA: Yes, sir because of the pressure that the accused was on top of me.

DL: So meaning the accused pinned down both of your legs in order for you not to kick him is that correct?

MA: Yes, sir.

DL: Because you try to kick him what was your hands doing at that time?

MA: I scratched him from his back.

DL: Was the scratching done gently or with force Madam Witness?

MA: With force but he told me not to move or else he would kill me.

DL: So meaning it was not an embrace?

MA: No, sir.

DL: How about his face did you not try to scratch his face?

MA: He was sucking my breast.

DL: Instead of scratching his back did you not think of pulling his head away from you?

MA: While I was scratching his back I am pulling him away from me but I could not overcome his strength.

DL: But you did not scratch his face?

MA: No, sir. (C2-TSN3:31-34)

The use of presuppositions in questions, particularized in the extracts in this analysis, is viewed as a discursive practice that revictimizes the women rape complainants. In particular, the cross examining defense lawyers, and judges emphasize the numerous and unlimited options that the complainants did not pursue, and by doing this discursive practice, instances of blaming the complainants are predominant. Common causes of blaming include women's attractiveness and their pre-assault behaviors such as being provocative, daring, and careless (Seligman et al., 1977; Thornton and Ryckman, 1983). However, what is most obvious in this analysis is that the women are blamed for their own rape cases because of their "inaction".

In her study, Ehrlich (2001) underscores that the judicial process fails to recognize the particularities of women's responses to the threat of sexual violence. That is, the behavior of complainants are often evaluated from the vantage point of a masculine subject (accused) when in fact, their "inaction," and deficient signals can be contextualized as strategic acts of resistance and not indicators of consensual sex. The complainants in this essay may have likewise acted in ways that can prevent more serious and prolonged instances of violence. Their chances of surviving a rape incident are by playing things safe (especially with known assailants) and doing what they think is reasonable and instinctive. Yet, the lawyers and judges suggest that the complainants did not pursue all possible options for their escape from rape. Instead of understanding women's reasonable ways of seeking help and extent of physical resistance, they

believe that these ways may not be enough grounds for a conviction of rape.

Another skillful use of presuppositions in questions allows the lawyers and judges to provide certain information which may be hard for the complainants to negate. Lawyers' and judges' versions of particular rape events are presumed to be truth since the complainants are expected to answer what is asked, and they have no right to object to the presupposed information embedded in the questions. The cross examining defense lawyers are at an advantage when their versions of events are heard, and the complainants (at their desperate state) may not even attempt to contest the lawyers' or judges' versions.

Finally, the most prevalent speech act used by the lawyers and judges in their presupposed questions is the directive—to inform or to remind the complainants of the unlimited options to avoid rape. When lawyers and judges inform or remind the complainants of options that the complainants did not take, their institutional authority in court is strengthened. The strategic use of presuppositions in questions allows them to highlight the use of logic and common sense and to be reasonable during instances of rape. The complainants are attacked of their post-rape behavior that failed to conform to male notions of logical response to the crime while trivial inconsistencies suggest faulty memory (Conley and O'Barr, 1998). In the Philippines, many of the decisions of the Supreme Court have laid down the rule on utmost resistance, escape attempts, or screams for help in order to claim lack of consent (e.g., People v. Novales, 1981 in Ursua et al., 1995).

3.0 Agentive positioning: Accused's plausible narratives

In courtroom proceedings, language is the primary means by which participants (witnesses, lawyers, judge) convey information about the events that are the subject of the court's deliberation (Ehrlich, 2001). Through narratives in their testimony, the witnesses whether they are the complainants or the accused position themselves with different stances in their recollections of their actions in the course of a direct or cross examination. It has been common that the accused provides an alternative characterization of events or a different version of events that contests the complainant's claim for truth (Drew, 1992). He may shift in order to make sense not just of the past events but of the current self as one who presents and represents his past acts (O'Connor, 2000). Central to this kind of structuring of versions of events is the speaker's agency revealed in discourse.

A grammar of agency is revealed in the units of discourse that speakers use in telling of past acts (Ehrlich, 2001). Agency is not simply active versus passive relationships between human agents as actor, goal, etc. and the verbs speakers use to recount their actions, but it is also a way for speakers to position themselves as responsible of performing the action/process in discursive events. Positioning, which is a dynamic process different from the more static term "role", is a way for speakers to configure themselves and others in the statements they make and stories they tell (O'Connor, 2000). They may likewise use active, passive, or passivizing verb phrases that signal the positioning they have taken in relation to their actions. Furthermore, their commentaries on the information and the evaluation of the past act may also mark their contribution to personally contextualizing not only their agency but also others.

In the following extracts, active verbs project agentive positioning toward specific

events in cases of rape. The uses of personal pronouns as grammatical subjects of the active/transitive verbs that designate acts that are wilful and intentional (Kitagawa and Lehrer, 1990 in O'Connor, 2000) such as (1) referential uses that identify specific individuals and that deictic uses are a subset of referential pronouns where the identification of individuals is specified in terms of the speech situation; (2) impersonal uses (generic use) that apply to anyone and/ or to everyone; and (3) vague uses that apply to specific individuals, but who are not identified, or identifiable by the speaker, may highlight the expressions of agency and responsibility that emerge in the interaction. In the extracts of this part of the analysis, the strategy of the accused and the lawyers is to diffuse or distribute the agency of the accused by adhering to referential uses in the initiation of sexual acts thereby making the complainant an agent and/or a co-agent to denote consensual sex rather than rape.

Utterances that deny involvement show the accused's stance toward his agency—diffused or non- agency. He may sound distanced, innocent, and he may position the complainant as agent (actor, sayer, behaver) in the event being recalled. It is in this capacity that the accused assigns the blame to the complainant, and by doing so he reveals much denial of responsibility for acts that transpired, prior or during the alleged rape. In fact, in the extracts that follow, the accused position themselves as even more of a victim (O'Connor, 2000); their positioning do not reveal men who have done wrong, but as persons who have been made victims by women who may have fabricated their claims for ulterior motives. At some point, they position themselves in events of helplessness, as persons who are victimized in court.

With "she" serving as the agent of EA's (accused) testimony in "She was the one", "She likes me", "She was doing laundry of the clothes of my children", "She first invited me", "and "She conversed with me and situated herself beside me", EA positions himself as the goal (receiver) of the material processes such as "like", "invite". He is acted upon by an agent (VM, the complainant) who seems to be an initiator of acts especially when EA uses intensive attributes and pronouns such as "the one", "first", and "herself." He blames VM for taking initiatives in being near or with him and his family by going to his house, doing the laundry, and inviting him to go upstairs. Her telling him that she likes him, and situating herself beside him are perhaps to him acts of seduction. According to EA, VM is as though in control of the situation especially when she tells him that "no one will know anything" about what they do (forbidden sex). In this instance, EA seems to be subjected to VM's advances. With EA's representation of VM's agentive positioning, he takes advantage in his pleading not guilty for the crime of rape since prior the alleged rape, all events are said to be consensual.

Extract 8

DL: Considering that it was the very first encounter supposedly, can you tell this Honorable Court exactly how it did happen?

EA: *She was the one who went to our house* because according to her *she likes me.*

DL: You wanted to tell us that the private complainant went to your house, knocked the door and you opened, then she told you right away to have sex?

EA: Because at the back portion of my house, the door was open. We have the water tank there and *she was doing laundry of the clothes of my children*.

DL: So she approached you and told you right away to have sex, is that correct?

EA: *She first invited me to go upstairs* because we have something to talk about ourselves.

DL: And after telling you that, what happened?

EA: *She conversed with me and situated herself beside me* and then she told me that *no one will know* if something will happen to us. (C3-TSN11: 23-24)

Very definitive samples of diffusing agency by using "we" to denote consensual sex are found in extracts 9-11 when GL, a house help, filed a rape case against her employer, VJ, who is also her "ninong" (godfather). The statements of VJ "We were already petting", "we pet", "we were already embracing and kissing", and "we both have sexual enjoyment" signify some degree of consensual sex between them. With the past continuous process "we were already" and the –ing form suggests that there have been prior sexual activities that happened before the alleged rape incidents (10 counts). According to VJ, there are no rape incidents because GL was said to be "excited" during sexual arousal, and to have "enjoyed" it. Furthermore, VJ shows non-agency in "The sexual tension is already building up", and the judge situates him in this activity (building up of sexual tension) by asking "…you were excited?" However, VJ strategically diffuses his agency by indexing GL as co-agent in "she was also excited" and in the same manner with "I enjoyed also and she enjoyed also." By always including GL in these states of excitement and enjoyment, VJ proffers that he is not solely responsible for all the sexual activities. To even sound as though he is at the downside, he positions himself as cautious and "nervous" about the affair (Extract 9) while he stations GL as the more experienced in sex in the lines of Extract 10 "she do oral sex with me", "she wants me to kiss her breast", "she wants me to suck her tongue", "she kiss me and I kiss her. I kiss her on the neck, on the breast. I touch her private part she touch my private part" (Extract 11)

Extract 9

C: And when she was already wearing this skirts, did you find her attractive?

VJ: *We were already petting. The sexual tension is already building up.*

C: In other words you were excited?

VJ: *Yes, she was also excited.* But I held myself because the chances of being caught is big. *I enjoyed also and she enjoyed also but I was also thinking it twice because I was also nervous.* (C7-TSN5: 32-33)

Extract 10

PL: And you and GL have not actually talked about loving each other, is that right?

VJ: I told her that I like her.

PL: In fact she did not tell you that she loves you?

VJ: She did not but the action is very definitive. There are some situations that you don't need to say I love you. Only words can define.

C: Her actions speak louder than words?

VJ: I think, your Honor.

PL: Mr. Witness please tell what particular act this private complainant do which led you to say that she wanted that way or she wanted to sex with you?

VJ*: We pet, she do oral sex with me.*

PL: Before that, before this sexual intercourse happened, what particular act of this private complainant which led you to believe that she wanted to have with you?

VJ: Definitely the first time we pet she did not resist. She liked also to be kissed. As a matter of fact *she wants me to kiss her*

breast. She wants me to suck her tongue. How could I say that she doesn't want to have sex with me. (C7-TSN5: 40-41)

Extract 11

PL: Could you describe to us how do you define or describe this petting that you said you had with the complainant?

VJ: *We kiss each other, she kiss me and I kiss her. I kiss her on the neck, on the breast. I touch her private part she touch my private part*. (C7-TSN5: 45)

Other discursive features that show diffusing agency is using "both of us" and "together" to denote co-agency on certain acts as revealed in extracts 12 and 13. In lines "Both of us peeped out", "Both of us went inside the room", the accused EP situates himself and the complainant, MA, as individuals regarded and identified together; that is, the processes "to peep" and "to go" in the extracts are performed by two persons at the same time. When two persons perform an act together, the notions of co-agency and mutuality are undeniable. The meaning that goes with "to peep out together" to see the wife of the accused from the window suggests that both of them conspire to the infidelity, and this claim of co-agency may be used as solid proof to the consensual sex and may underscore the actuality of a loving relationship.

Extract 12

DL: When your wife left for the nipa hut what did you do?

EP: MA went inside the room and then she pulled me out under the bed.

DL: When she pulled you out under the bed what happened next?

EP: *Both of us peeped out* my wife at the window.

DL: When you said both of us, you mean you and MA?

EP: Yes, sir. (C2-TSN6:17)

Extract 13

DL: After she applied some face powder what happened if any?

EP: She went outside the room and proceeded to the place where I was. She stood beside me and held me on my waist.

DL: When she held you on your waist what happened next?

EP: *Both of us went inside the room*. (C2-TSN6:12-14)

In sample extracts in this section, women are positioned by the accused in their testimonies as primary agents and co-agents of sexual activities while the accused may serve as the recipient/goal of the act, and even positioned as the helpless, passive (acted upon), and obliging participants in sexual events. Discussions of these extracts support the claim that relationship theory as gendered ideological frame is very much prevalent in the conduct of rape case trials in the Philippines. According to Ursua et al. (2005b), one that continues to be a common defense in rape cases is the existence of an amorous relationship between the complainant and the accused even though this defense has been rejected by the Supreme Court in many cases. Still, lawyers and accused aim to diffuse or distribute the agency in the initiation of sexual acts to advance notions of mutuality, reciprocity, and consent.

4.0 Repetition in courtroom discourse

According to Tannen (2007), repetition is recurrence and recontextualization of words and phrases in discourse that allows ways of creating meaning. Its forms can be identified according to several criteria (Tannen, 2007). First, one may distinguish self-repetition and allo-repetition (repetition of others). Next, instances of repetition may be placed along a

scale of fixity in form, ranging from exact (the same words uttered in the same rhythmic pattern) to paraphrase (similar ideas in different words). In the middle of the scale is repetition with variation such as questions transformed into statements, statements changed, and repetition with change of person or tense. There is also a temporal scale ranging from immediate to delayed repetition (within the discourse or across the TSNs). Extract 14 illustrates some of these forms such as EA's (accused) delayed exact clausal self-repetition "we kissed each other," reformulated allo-repetition of the defense lawyer "When you say you make love" from EA's "And after that we make love," and exact self-repetition of DL as a ritualized courtroom discourse in "please tell this Court."

Extract 14

DL: When you were already there in the hut, what happened next?

EA: I laid beside her and then *we kissed each other*. *And after that we make love*.

DL: When you say you make love, what do you mean; *please tell this Court.*

EA: When I laid beside her, she took off her panty.

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DL: When you say you make love, *please tell this Court* specifically what did you do?

EA: While *we kissed each other*, thereafter she said "ara na, ara na" (it's almost there). (C3-TSN9: 7-12)

Johnstone (1987) notes that repetition is especially frequent in highly formal or ritualized discourse (e.g. courtroom) and in speech by and to children. It is a way of creating categories and of giving meaning to new forms in old terms. However, Fuller (2009) argues that repetition as a linguistic strategy is used differently in courtroom discourse than in mundane or everyday conversations. Repeating a point or a question to insure clarity for the jury or judge is a tactic often used by court lawyers. Most of the lawyers who repeat their own questions intend to draw out some inconsistency between witnesses' replies to the same question which can be used to discredit claims. Furthermore, repetition can serve to put pressure on the witness and highlight the lawyer's disbelief to the answer, or a particular element in the testimony. Often the quotation of a testimony or its part is subjected to an intonation contour or a framing such as "you claim that…" which throws doubt on the content of the repeated element (Gibbons, 2003).

This section of the analysis attempts to illustrate how forms and functions of repetition reveal the highly formal and ritualized discourse in the courtroom, the drawing out inconsistency from the witnesses, the giving of new meanings or characterization of new events from the old ones, and the pressure put on the complainant by highlighting disbelief and typifying her as a fabricator of lies.

Extract 15 starts with the defense lawyer's (DL's) projecting of information by quoting back the complainant's statements or meaning in her earlier testimony by focusing on what she felt (mixed feeling, fear, and resisting) during the assault and asking which of the feelings was dominant. An information projected question type is difficult to deny convincingly except for the part "you said that," for MA can say "I said nothing of that sort." Still, other information embedded in the question is hard to deny specifically what she felt during the assault. In DL's framing of his question "was it to resist or to succumb to his desire," it is observable that DL only includes "to resist" and does not mention about her mixed feeling and fear; in fact, he

even provides an added information which is "to succumb to his desire." This added information has become DL's persistent projected information throughout the segment of this interaction. MA has attempts to redirect this information to what she truly felt "fear," but DL insists on MA's decision to give in to the accused's sexual desire in "you decided to succumb to his desire," "you decided not to fight with the accused," " you succumb to his desire meaning there was no resistance at all." The use of these repeated and reformulated forms is DL's strategy to project and establish pre-determined information in his questions to claim sexual consent.

Extract 15

DL: And because there was a mixed feeling on your part one of being frightened and of course to protect your good honor and you said that you applied some resistance on your part my question is what was the dominant feeling of yours at that time, was it to resist or *to succumb to his desire?*

MA: Because of too much fear, I could not overcome his strength and the moment I might be wounded he might kill me.

DL: So what did you do?

MA: It came to my mind that the moment I could survived I would retaliate sir.

DL: Meaning at that moment *you decided to succumb to his desire?*

MA*: I succumb sir* because he overpower me with his strength.

DL: Is it not correct because you are being frightened of being killed if you resist you said that *you decided not to fight with the accused* is that correct?

MA: Yes, sir.

DL: Now, because *you succumb to his desire meaning there was no resistance at all* when the two (2) of you went to the bed is that correct?

PL: Objection your Honor, question is misleading because the victim was already pushed in the bed not that the two (2) of them will go to the bed because the victim was already in the bed.

C: Objection sustained, reform the question. (C2-TSN3:28-29)

The phrasal repetitions "the accused suddenly appeared in front of you" in extract 16 are used as DL's discourse strategy to recontextualize information "he suddenly came in front of me" first told by NM in the direct examination. This glossing or developing the gist of a witness's earlier statements is called selective reformulation (Garfinkel and Sacks, 1970). DL, however, reformulates and recycles "the accused suddenly appeared in front of you" several times in extract 16, and these repetitions refer to two varying events: (1) the accused (RM) appearing in front of the witness at the foot walk when the latter was going home; and, (2) RM's appearing in front of the witness when she regained consciousness. Obviously, these two events transpire in different manners and at different periods of time. However, an improbable witness may confuse the two events especially with the lawyer's repetitions of the phrase and projection of information just like in DL's questioning. In fact, DL attempts to mislead NM by recycling the same phrase, so she or the judge may think that RM just stood in front of her when she regained consciousness (i.e., while RM was doing a "pumping" motion, C4-TSN4: 15), and this attempt may eventually lead to the claim that RM did not rape her. With the use of the repeated phrases, DL wants NM to accept his version of an event (event no. 2). However, NM is watchful and on guard with this kind of trap during cross examination.

She contests the lawyer's version by attesting that the accused was not only "in front of her" but on "top of her" when she regained consciousness.

Extract 16

DL: You testified that at about midnight of April 23, 1999 while you were going home from the house of your friend*, the accused suddenly appeared in front of you*, do you remember having testified that?

NM: He suddenly emerged at the foot walk.

DL: You want to tell this Court that you were already traversing the footwalk going to your house *when the accused suddenly appeared in front of you?*

NM: Yes,sir, that is the way in going home.

DL: How far is your house from that scene in the footwalk *when the accused suddenly appeared in front of you?* 15 meters?

NM: Less than that.

DL: From that place *where the accused suddenly appeared in front of you,* can we see your house 15 meters away?

NM: Less than that.

DL: More or less 10 meters?

NM: Maybe.

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DL: When *the accused suddenly appeared in front of you,* what did you do?

NM: He held me in my arm and invited me to go.

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DL: So you were totally naked when you regained consciousness?

NM: Yes, sir, I was naked.

DL: And *the accused was there in front of you?*

NM: *He was in front of me and lying on top of me.* (C4-TSN4:8-10, 13)

Extract 17 illustrates how the accused DHL highlights the complainant's (EYP's) claim about being drunk before and during the alleged rape. DHL enumerates prior events to prove that there was EYP's sexual consent because she was fully aware of what was going on between them. These events include her getting off a taxi in front a hotel without his assistance, arguing with the hotel staff, alighting the taxi again, being aware that he put off the light and the TV, and not resisting while he unhooked her bra. The questions of DL are presupposed with a repeated proposition that "EYP was not drunk." DHL further allo-repeats DL's proposition in his answers "She was not drunk" to reinforce the claim on consensual sex. This particular exchange intends to eliminate "utmost physical resistance" as one of the prosecution's grounds for rape thereby implying that EYP fabricated her being drunk prior and during the alleged rape.

Extract 17

DL: Now, you said earlier at that time *EYP* based on your impression *was not drunk.* Why were you able to say that *EYP was not drunk* at that time?

DHL: EYP at that time she voluntarily got off in front of AT Hotel without my assistance. So I can say that *she was not drunk* even when she argued there.

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DL: At that time when you alighted from the taxi based on your impression, *was the complainant EYP at that time drunk?*

DHL: *She's not drunk.*

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DL: At that time when you turn off the light and turn off the tv, were you able to observe whether the complainant *EYP was drunk or not*?

DHL: No, sir.

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DL: After you turn off the light and the tv set, what then did you do?

DHL: Then I start kissing, then hug her and then I unhooked her bra.

DL: While you were unhooking her bra, did she give any protest or resistant whatsoever?

DHL: No, sir.

DL: *Was she drunk at that time or not?*

DHL: *No, sir, if she was drunk maybe she will just do like this, it is very difficult to unhook the bra.* (C6-TSN6:55-63)

In this last section of the analysis, the exercise of power in a trial proceeding of a rape case is revealed through the strategic use of phrasal self-repetitions and reformulation embedded in questions by a cross examining defense lawyers. These lawyers intend to advance their argument that the complainant was not a credible witness, and just fabricated the story of rape. According to Ursua et al. (2005), the Supreme Court even generalizes that baseless charges of rape have frequently been made by women actuated by sinister, ulterior or undisclosed motive. In this sense, rape and sexual violence against women are reproduced and legitimated by the judicial culture which justifies and excuses male violence.

Furthermore, myths such as "rape is easily fabricated" are deeply engraved and widely supported by the Philippine society; that is, more Filipinos believe that a large percentage of women who report rape are lying because they are angry, and they want to get back at the man they accuse. Women lie or exaggerate about rape incidents so they can extort money from a well-to-do man and when most lucky, marriage proposal may settle the case. These generalizations, however, have no empirical basis. In fact, there are rape cases which are unreported. Mendoza (2010 as cited in www.preda.org/main/archives) said that the actual number of rape cases is much higher than those reported, since many women and girls still decide not to complain to the authorities. For those who have successfully filed a complaint, most of the cases for example in RTCs in Iloilo are archived because the accused are at large, or the prosecution and defense settled outside the court because the complainants cannot afford to go on with the case. Complainants who may be in school may stop attending their classes until the trials have ended. Those who are married women may beget marred reputation. Thus, it is unlikely that reported cases are fabricated since the trial proceedings are arduous, and the stigma and prejudices toward the women victims are harder to bear than the stigma credited to the accused.

5.0 Conclusion: Rape, Language, and Power

Rape is undeniably an exercise of power. Aside from using actual force to take sexual advantage of victims at the physical level, rape is likewise interactional power in the courtroom manifested in ways that may be obvious or less obvious since they include gendered ideological frames which are broader abuses of power that society promotes (MacKinnon, 1995). In this essay, I explore the discourse practices of participants in court to understand the discursive control of judges, cross examining lawyers, and accused over rape complainants

by employing linguistic strategies such as presuppositions, diffusing agency, and repetition to reify rape myths like complainants' normal conduct, ulterior motives, and fabrication of their rape claims. But how these discursive practices and rape myths relate to the overall conduct of rape case trials in the South (Iloilo) may be another issue to address.

The exercise of power in court draws not mainly on the questionings and exchange among the participants but also in the idea that any part of each testimony contributes to the outcome of the trial, promulgated in the decision of the court. In rape cases, judges are required to come to a verdict of guilt or innocence on the part of the accused. Of the seven cases where data for the analysis were taken, only one case has garnered conviction and six accused were acquitted primarily because the prosecution was said to have failed to prove their guilt. In part the low conviction rate may be attributed to the particular characteristics of a rape case. Rape cases commonly lack physical or any objective evidence and boil down to complainant's word against the accused's and other witnesses of the defense. A lack of objective evidence means that these cases often require judges to evaluate whose story they believe. Research has demonstrated (Taylor and Joudo, 2005 in BPP School of Health Working Paper 2012) that judgement of credibility is more likely to be based on personal biases and attitudes than what a witness says. Yet, judges' evaluations of credibility in the seven cases varied greatly and were mostly influenced by demographics, beliefs, expectations, and attitudes about how a "real victim" of rape would behave. These evaluations also highlight relationships of complainants and accused, and the six cases that had been rendered acquittal rely on the belief that complainants have (illicit) affairs with the accused. The complainants are even said to have consented to the sexual instances and are likely to be held responsible for these instances.

As regard the sole case that the accused was ordered conviction, rape myths are still prevalent in the judge's analysis and evaluation. According to the judge, the complainant was the "ideal rape victim" because she was barely 16 years old, and she was one of those "young ladies who are strictly required to act with circumspection, prudence, and with great caution so they shall remain untainted." The complainant, according to the judge, was "not a sexual pervert out to seduce any man in sight…her only purpose was to protect her honor and to bring to justice the person who raped her." On the contrary, the complainants in the other six cases were characterized by the judges as fabricating their claims: there were no convincing evidence or observation to prove force, to show utmost resistance by asking for help, and to testify consistently in court the details that are expected to be found in other submitted documents such as the police blotter or affidavit. Judges also relied on opinions of medical experts presented as witness for the prosecution; however with careful analysis of the TSNs, these experts often proffered disclaimers toward the end of their testimony, thereby making their opinions even favorable for the accused. Undeniably, the dominant element in each of the cases is the prevalence of rape myths found not only in judges' evaluation promulgated in court decisions but also manifested in the questionings revealed in the TSNs. It is diplomatic to claim that discourses have real effects, and this essay demonstrates that rape myths embedded in discursive practices influence judges' decision making in the selected cases; it is however suggested that this investigation be replicated by analysing data from other courts across the country, for what may be true in the South may not be true in other

regions of the Philippines. And though linguistic theories may substantiate claims of secondary victimization in court, a thorough socio-political analysis of rape myths may fill the gaps and offer varying perspectives.

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