

The Victim as Witness

The 'Victim-Witness' in
International Criminal Law

The Witness

I told you that this case was really -- even though six witnesses would be called, that number was a facade, because the Prosecution's entire case is based on one witness, and that's Witness A. And it's not just based on her, but, specifically, it is based on her ability to recollect events, her ability to recall times, to recall dates, to recall places, sequences, people. You would have to believe in her abilities beyond a reasonable doubt if you were to convict Anto Furundzija based on her current reconstruction of events. Because, unlike most cases that you will try, there is no corroborating evidence for Witness A. None.

The Prosecutor v. Furundzija, (IT-95-17-T), Transcript , 22 June 1998

Definition of Sexual Violence

‘sexual violence, which includes rape, as any act of a sexual nature which is committed on a person under circumstances which are coercive. Sexual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact.’

The Prosecutor v. Akayesu, (ICTR-96-4-T),
Judgement, 1996, para. 688

A New Definition of Rape?

- ‘wider or more basic principle of penalising violations of sexual *autonomy*’
- ‘serious violations of sexual autonomy’ and ‘violations of the sexual integrity of the victims’, which breach ‘their fundamental human right to sexual self-determination’

The Prosecutor v. Kunarac, Kovac and Vukovic,
Case No. IT-96-23-PT & IT-96-23/1-PT,
Judgement

ICC Evidence

Principles of evidence in cases of sexual violence

In cases of sexual violence, the Court shall be guided by and, where appropriate,

apply the following principles:

- (a) Consent cannot be inferred by reason of any words or conduct of a victim where force, threat of force, coercion or taking advantage of a coercive environment undermined the victim's ability to give voluntary and genuine consent;
- (b) Consent cannot be inferred by reason of any words or conduct of a victim where the victim is incapable of giving genuine consent;
- (c) Consent cannot be inferred by reason of the silence of, or lack of resistance by, a victim to the alleged sexual violence;
- (d) Credibility, character or predisposition to sexual availability of a victim or witness cannot be inferred by reason of the sexual nature of the prior or subsequent conduct of a victim or witness.

Rule 70, Rules of Evidence and Procedure, ICC

ICC Institutional Practices

ICC

- 'fair representation of male and female staff'

Office of Public Counsel for Victims

- legal representation for victims

Victims and Witnesses Unit

- gender and sexual violence expertise

OTP

- 'focal point' for issues of sexual violence
- Special Gender Adviser