# The Fourth Rape: A Critique of *People v. Subingsubing* and an Analysis of Laws and Jurisprudence Relating to Incest

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SUBJECT(S): CRIMINAL LAW

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This Note employs the case of *People v. Subingsubing* (228 SCRA 168) to illustrate the difficulty of prosecuting the crime of incest when embodied in a complaint for rape. It clarifies at the onset that incest is covered by the crime of Qualified Seduction, but that incest victims rather resort to a charge of rape in the redress of their injury. The Author also emphatically claims that the crime of rape was not designed to solve the problem of incest. While it can account for its perverseness, the nature of incest does not fall under the strict definition of rape. Only three circumstances constitute rape, incest is not among them. For this reason, incest victims are left without recourse in the sense that their offenders eventually are acquitted.

To address this concern, the Author stresses the need for a proper understanding of incest. He states that the peculiar nature of incest can account for the lack or inadequacy of traditional rules on rape, which are based on law and jurisprudence. Concretely, he proposes that new rules on cases dealing with incest should be formulated. Based on this premise, the Note further argues that when a charge of incest is made in a prosecution for rape, the burden of proof should automatically shift to the defendant to prove that there was consent.