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FALSE ACCUSATIONS OF RAPE IN THE NEWS

The Sexual Offences Act 1993 has, for the first time, allowed boys under the age of 14 to be charged with rape and we have been interested in media responses to such allegations (Soothill, 1997; Soothill, Dennison and Piggott, 1998). In the media reporting of this phenomenon – new in law but not a new activity – there were some interesting continuities, some familiar tunes being played, and not much difference in newspaper reports about this supposedly ‘new’ kind of rape compared with the media reporting of other kinds of rape. In fact, while there have been some changes in the media reporting of rape – such as wider coverage of rape cases in popular newspapers, much more sensationalism and so on – it can also be said that much of the media reporting of rape has remained remarkably constant, despite the concerted attempts of feminists to influence the debate.

Certainly, the problem of rape has many different aspects, but one that perhaps causes more heated debate than any other is the likelihood (or otherwise) of women making false accusations against men. Many feminists would be reluctant to entertain the notion that women do sometimes make false accusations. However, we are willing to acknowledge both in theory and in practice that they sometimes do. Indeed, over the last 20 years or so there have been quite regular, but not frequent, reports of women who have been found guilty in court of making false allegations of rape. Such reports are usually brief and short on facts, and it is not clear whether they appeared in newspapers because they were unusual and isolated cases, or whether they were simply some examples of what in reality are quite regular occurrences. Whatever the purpose, the effect of such reports seems clear in that they provide continuing, quiet proof that women do make false accusations of rape.

We have been looking at the press reports of as many of these cases as we could find, of women who are brought before the court for making false accusations of rape. We have ranged widely and these are an unselected series. In looking at rape cases in the press, however, one quickly recognizes that much more pervasive than these cases is the

familiar defence plea that the woman made it all up – a message which is vividly portrayed in a recent front page headline in our local newspaper – “Rape ‘victim’ made it up” (*The Visitor*, Lancaster, September 23, 1998).

We seem to be caught between the feminists’ assumption that women never, or perhaps very rarely, make false allegations, while a common assumption in the court – often luridly declared in newspaper reports – is that many women do. So what is it all about? What is actually happening? To probe this conundrum, we need to consider the history of the media reporting of rape, the development of the law, and feminist approaches to the issue.

The Story So Far

The work of Susan Edwards (1981) provides powerful historical evidence that a hundred years ago the very idea of rape as a concept was strongly challenged. She quotes, for example, Dr Tait as saying in 1889: “I am perfectly satisfied that no man can effect a felonious purpose on a woman in possession of her senses without her consent.” But, as the possibility of rape was gradually accepted the media reporting of acquittals at the beginning of the twentieth century helped to produce the myth of the lying, malicious or deluded complainant. The Judge, the defence counsel and especially the media made sense of acquittals according to the false accusation hypothesis. In order to establish a case there usually needed to be strong physical evidence that the woman had resisted a man’s advances to the limits of her strength.

In some respects the Sexual Offences (Amendment) Act 1976 can be seen as a watershed. Principally it established that any gratuitous detail as to character might work to the discredit of the principal prosecution witness and, more fundamentally that the definition of rape should be significantly restated as “sexual intercourse without consent”. Instead of demanding evidence of physical resistance, the law now focused on the question of consent. Women were to be believed if they could show that they had not consented to sexual relations.

But the Act has not had the desired effect. Sue Lees (1996) maintains that “the main purpose of trials appears to be to protect men from false allegations rather than to give victims justice” (p.128). Certainly the myth of false allegations remains firmly entrenched in the court behaviour involving rape cases and is one of the reasons why so many cases are acquitted. Acquittals of rape have risen dramatically. In fact, the proportion of convictions in rape cases remained fairly constant – between 70 and 80% – for the first four decades or so following the Second World War. The matter of the dramatic fall in the conviction rate for rape to just over 50% in the 1990s is of serious concern. Curiously, however, while the acquittal rate has risen at an alarming rate, newspapers are reporting fewer rape acquittals than previously. In the 1950s, 1960s and 1970s it has been estimated that around one-quarter of rape cases acquitted by the courts were reported in the national

newspapers, but this fell to around 8 % in the 1980s and 2% in the 1990s (Soothill and Grover, 1998). Why are there so few reports of acquittals in newspapers and where does the issue of false accusations fit in?

What are the Present Confusions?

No longer is the serious nature of the crime of rape in dispute, but there is still a great deal of argument about the nature and extent of rape. Brown *et al* (1993) point out that “in rape cases the most common defence story is the one which presents the characters and events as consistent with a narrative of consensual sex followed by a false allegation” (p.189). No longer does the rape case hinge on evidence of resistance with the issue of consent way in the background; today the issue of consent is in the foreground with the pervading assumption that women lie about consent with malicious intent.

In brief, women are assumed to be making malicious allegations against men with the express purpose of getting men into trouble, or of getting themselves out of trouble. The assumption is that they lure men by appearing to consent to sex and then deny that they did so. It all seems straightforward, but there's the rub. An important test of the thesis are the accounts given by women who are in court actually accused of making false allegations. Close examination of such cases that have been reported in the press suggests that what we are being asked to believe about the behaviour of women and actual reality rarely seem to coincide.

Varieties of False Accusations

Most laws against sexual offences do not concern themselves with the problem of consent. They are simply laws against certain sexual acts such as unlawful sexual intercourse with a girl under 16, buggery, and indecency between males. However, with normal heterosexual acts between adults, the issue of consent becomes crucial, with the law legislating against sexual acts between non-consenting adults. But disputations about consent can hinder the chances of a conviction (Gregory and Lees, 1996). One reason for this is that victims do not get the chance to describe exactly what happened. An examination of news reports soon illustrates that the circumstances are far from simple and that the issue of consent is not nearly so central as one might perhaps expect. One way to examine the complexities is to divide false allegations into two categories. In one category the woman is accused in court by the defence, and is reported to have made a false allegation when she agrees to the charge; “you made it all up” In the second category, and usually as a result of police diligence in uncovering the facts of the case, the woman can be said quite clearly to be admitting that she is at fault as in “I made it all up” We shall consider these categories separately.

The first category is represented by the situation where the court judges the motives and feelings of women and it is a situation which

causes most concern over the charge that women lie about rape. When a woman is accused by the defence of making a false allegation the evidence is not always sound. For example, under the headline Judge gaols woman who killed and cried 'rape', a report in *The Guardian* reveals how a Judge failed to accept the woman's allegation of rape as a reason for killing a man. Sentencing her to four years for manslaughter, the Judge said: "From the evidence I am satisfied beyond reasonable doubt that the deceased never tried to rape you and you never thought he was trying to do so. I accept there was a quarrel that afternoon, and there was a struggle and, in accordance with the jury's verdict, I accept that you were provoked during the course of that quarrel" (June 13, 1987). Here the Judge chooses to speak for a dead man rather than accept the woman's explanation, and to affect the outcome of the case by doing so. In effect he has said to the woman "you made it up". In another case the claims made by a 30-year-old hotel receptionist resulted in a 29-year-old Lebanese businessman spending 12 days in custody. It was said that the rape allegation to the police stemmed from the woman feeling ashamed about having sex with a complete stranger. She withdrew the complaint and was arrested (*The Guardian*, November 10, 1990). It is quite difficult to see how a woman who is ashamed of having had sex would then expose herself to the shame of admitting in public that she had been raped.

However, the fact is that women are capable of making false allegations of rape and when a woman says "I made it up" she is to be believed. Most significantly, women are accused of crying rape out of malice and, while women do sometimes admit to them, cases of outright malice seem quite rare. One such is the woman who went so far as to slash her legs with a broken wine glass in an attempt to back her allegations. The charges against her "womanizing" lover were dropped when police checked his alibi and the woman admitted perverting the course of justice (*The Times*, January 30, 1993). This was a deliberate fabrication with the specific intent of causing trouble for her lover. Significantly, this woman did not lie about consent and an examination of longer reports of other cases provides evidence of complicated situations where consent is simply not the issue. These cases may be titillating, such as the story of a lesbian who cried rape to hide from her live-in lover that she had had sexual intercourse with a friend in order to try to have a child. The complainant picked out another man on an identity parade who then spent 18 days in custody until he was cleared by DNA tests. When police arrested her friend his matched DNA provided 'conclusive' evidence. The friend denied rape and the lesbian woman later told the police she had asked him for sex (*The Guardian*, August 6, 1991). There was no malice against any particular man, and the rape emerged as part of an elaborate plan developed by a woman who wanted a baby. In another example, the story of a young girl who lies about her activities to her parents in order to protect herself from their anger is reported in *The Times*. The teenager was fined £800 for

inventing rape to avoid getting into trouble for arriving home late (November 25, 1994). She has chosen an extraordinary way to protect herself from the anger of her parents but again, there is no dispute over the issue of consent.

Occasionally, women use allegations of rape for monetary gain. A 20-year-old nurse had been awarded £600 from the Criminal Injuries Compensation Board after falsely claiming she had been assaulted by her former boyfriend and raped by his best friend. The prosecutor said at the Old Bailey that she wanted revenge after her former 29-year-old boyfriend had ended their affair. The case never reached court because he had a cast iron alibi. She then went to police and insisted that his best friend (a 27-year-old postman) had raped her. But, after spending a day in custody, he was able to prove he was somewhere else at the time. She admitted two charges of acts intended to pervert the course of justice and obtaining property by deception (*The Guardian*, June 4, 1991). Another report in *The Guardian* tells how a mother of three persuaded male motorists to give her a lift and then threatened to cry rape unless they handed over money. She was convicted of blackmail and assault, and had four similar previous convictions (July 28, 1993).

There are also cases where the woman is seen to be making false allegations because of impaired judgment. Under headlines such as "Shame of cheat who cried rape" (*Daily Mail*, August 4, 1995) and "Suspended sentence for false rape claim" (*The Guardian*, September 1, 1995), more details of a false allegation emerge in another case. Described as "a woman who brought a police force "virtually to a halt", the report mentions "the effect of police launching a five-day manhunt costing £7,000 before the 29-year-old mother of two admitted she had lied. The court was told she made the false claim to cover up a one-night stand with a man. She did not want her boyfriend to find out, so she pretended she had been abducted by two men who drove her to a field and raped her" Newspaper reports can produce different interpretations. One report mentioned that her partner was violent and that she was now in a hostel for battered women, but the other report did not. While not condoning the false allegation, one can begin to understand more easily after reading one report why she lied. After being remanded for a pre-sentence report, she "had been diagnosed as suffering from 'an identifiable psychiatric condition'. She was not behaving rationally at the time" (*The Guardian*, September 1, 1995).

In each of these cases, the woman is not demonstrably guilty of lying about consent. Her motivation is far more complicated and, except for the first example, not obviously fuelled by a wish to get a particular man into trouble. Indeed, were it not for diligent police work, several of these cases would have remained on file as either not proven or not detected. Consent is not the issue; far more important is the fact that in each case the woman found herself in a situation which she thought she could control by using the accusation of rape.

Beware of Myths and Stereotypes

Nowadays, following the 1976 Act, consent has been identified as the central issue. However, what seems to be happening is that dangerous myths from the nineteenth century and misleading stereotypes of female behaviour from the twentieth century are combined to construct a false picture of pervasive false accusations surrounding consent. Defence counsel use such myths in order to try to secure an acquittal. One powerful myth is that women have consensual sex followed by a false allegation of rape with the intent of getting the man into trouble. We believe that this is a myth which needs to be exploded. Of course, it is possible to invent a scenario where this may take place, but the circumstances seem to be most unusual. What we insist is that this must be the exception rather than the rule which defence counsel routinely encourage everyone to believe. The work of the police has been helpful on occasions to reveal that false accusations have actually taken place. However, there are usually bizarre and unusual circumstances surrounding such cases which are sometimes difficult to disentangle, but consent is rarely the central issue. These cases are very different from 'normal rape' where a woman's account of what happened is so often brutally and unrealistically challenged by the defence counsel.

Quite properly the 1976 Act said that the central question was one of consent and not of physical resistance. In accounts routinely orchestrated by the defence counsel, the woman is said to have consented to sexual relations and lied about consent to get a man into trouble. Our contention is that this, in fact, very rarely happens and should not be presented as the normal behaviour of women who make allegations of rape. We contend that a more appropriate assumption is that women do not lie about consent.

The dilemma, of course, is whether these cases of false accusations really do provide insight into 'normal rape' We suggest that they do, for they indicate the contexts in which women may lie. The evidence from considering the cases where women are in court accused of false accusations of rape is that they are much more likely to be trying to get themselves out of trouble. The interesting finding is that, where the facts of the case are known, consent is rarely the issue.

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