

# Research Briefing:

## Court observations of English rape and sexual assault trials in 2019.

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December 2021

### ABOUT THE RESEARCH

Criminal justice responses to sexual violence have long been recognised as inadequate and have come under increasing scrutiny. For instance, the Government's Rape Review apologised for failing victim-survivors (HM Government, 2021) and Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services (HMICFRS) 2021 inspection into how effectively police respond to violence against women and girls found failings and inconsistencies across all levels of policing and ultimately called for a fundamental overhaul of responses across the whole justice system. The courtroom is an under-researched aspect of criminal justice responses, yet it forms a crucial part of understanding what is going happening across the whole system.

This briefing provides vital insights into this by setting out key findings from an observational study of rape and sexual assault trials conducted in 2019.

## CONTEXT

It is well-recognised that criminal justice responses to sexual violence are inadequate and that victim-survivors from minoritised or marginalised groups often face additional barriers to justice.

While rape myths are commonly turned to as an explanation for poor criminal justice responses to sexual violence, they alone cannot explain the disparities in the responses received by those from minoritised or marginalised groups. Developing better understandings of the mechanisms by which victim-survivors are differently impacted and affected at all stages the criminal justice system is therefore crucial.

Court observations from 2012 indicated that stereotypes related to social class, disability, race, ethnicity and nationality interlinked with rape myth narratives to bolster defence arguments aimed at undermining victim-survivors' credibility (Smith, 2018). The research set out in this briefing sought to develop this understanding by providing a further, and more recent, exploration of the role of cultural narratives in sexual offences trials.

This briefing presents the most recently available sexual offences trial observations, carried out in the year up to COVID pandemic which saw restrictions in court attendance.

The data was collected through the observation of six rape and sexual assault trials across three English Crown Courts. Handwritten transcripts of the trials were produced, due to restrictions on court recordings. The data was analysed thematically to identify dominant themes and narratives across the transcripts.

Attempts to gain a larger sample size were hindered by tumbling prosecution rates, and further extensions to the data collection timeframe were not possible due to COVID.

## DEFINITIONS

**Rape myths:** Misperceptions about rape (its causes, context, consequences) that serve to deny, downplay or justify sexual violence (Gerger et al., 2007).

**Cultural narratives:** Culturally shared understandings about people, places, and things, that apply consistent stories and themes across individuals and settings (Glover, 2003)

## BRIEF METHODOLOGY

### WHY RESEARCH COURT?

The courtroom is under-researched compared to earlier stages of the criminal justice system (CJS), especially with regards to sexual violence. Even though most criminal cases are resolved outside of the Crown Court, the *possibility* for jury trial shapes the preceding points of the CJS, such as police investigation and the gathering of evidence (Brown et al., 2010). Assumptions about what may happen in court can therefore inform earlier decisions in the criminal justice process, including the decision not to prosecute. This is why it is important to research what is happening inside the courtroom.

### KEY FINDINGS:

- Rape myths continue to permeate rape and sexual assault trials
- Rape myths are bolstered by broader cultural narratives about gender, social class, age, and mental health.
- Pejorative cultural narratives relating to social class were deployed against the mothers of victim-survivors in child sexual offences cases.
- Digital communications evidence plays a role in reinforcing rape myths and cultural narratives at trial.

## RAPE MYTHS AND CULTURAL NARRATIVES

Court observation studies have, over decades, consistently found that rape myths are deployed with frequency by barristers in sexual violence trials (Adler, 1987; Lees, 2002; Smith and Skinner, 2017; Temkin et al., 2018).

**All observed trials had multiple rape myths** referenced within them. The following is a **non-exhaustive list of rape myths** that were reflected in the trial narratives:

- Victim-survivors can and do actively resist rape.
- Women say no to sex when they really mean yes.
- False allegations of rape are common.
- Women who have sex then regret it lie about rape.
- A naughty child who lies is probably lying about being abused.
- Women often lie about rape out of jealousy or to get revenge.
- When someone is raped, they will tell someone immediately.
- Someone who has been raped will be able to tell their account with perfect consistency every time.
- Someone who has been raped would never speak to their rapist again.
- Someone who has been raped would never have sex with their rapist again.
- If a woman flirts with a man, it means she wants to have sex with him.
- If a woman sends sexual messages, it means she consents to sex.

In line with previous observation studies in England and Wales (Lees, 2002; Temkin et al., 2018; Smith, 2018), the observed trials were permeated by problematic ideas relating to: the expectation of victim-survivor resistance to rape; pre- and post-assault relationships between victim-survivors and defendants; the expectation of prompt reporting of assaults;

and the expectation that victim-survivors provide consistent and detailed accounts.

Rape myths are inextricably linked with broader cultural narratives. They are shaped by and reinforce one another. In the observed trials, rape myths were bolstered through the following cultural narratives:

- Respectability as a marker of credibility
- Women and children as untrustworthy
- Mental ill-health as unreliable
- 'Good men don't rape'

It is important to note that these cultural narratives were drawn upon regardless of any congruence with who trial participants may or may not have been in reality. The limiting nature of the adversarial trial format means that it comes down to perception and portrayal, which are structured through the words of barristers.

Narratives of **respectability** permeated all trials. These narratives drew on middle-class ideals of what counts as respectable whilst also drawing on working-class stereotypes. This positioned victim-survivors, and other witnesses, as not credible because they did not adhere to middle-class ideals. For example, popular culture is full of images portraying working-class women as sexually excessive and excessive in their alcohol consumption. This is especially the case for young working-class women.

The idea that women are **inherently untrustworthy and deceitful** and therefore lie about rape has been around for centuries (Jordan, 2004; Bourke, 2007) and there are similar historical narratives about children being disbelieved when making claims of sexual abuse, particularly children from working-class families (Bourke, 2007).

Cultural narratives were rarely drawn on explicitly, instead being referenced through seemingly benign questions about a person's living situation or lifestyle, or through the use of particular words or phrases. For example, words such as **hysterical, crazy, jealous, paranoid, or psycho** all have implicit pejorative cultural meanings.

## CASE STUDY – Trial 1

The female victim-survivor and male defendant were friends. They were both in their early 20s. The trial related to two counts of rape, which were alleged to have taken place after two separate nights out where they had been drinking heavily together. Rape myths reflected in the trial narratives centred on the 'ideal victim' and the notion that women who regret drunken sex lie about rape. These ideas were reinforced through drawing on oppressive cultural narratives that position young working-class women as 'unrespectable' 'binge-drinkers' who are 'sexually available'.

As was common across all of the trials, deeply embedded gendered narratives that position women as inherently untrustworthy and deceitful were drawn upon to bolster rape myths, and in this trial this was further bolstered through narratives that present mental ill-health as a sign of inherent unreliability and position women as prone to exaggeration.

Often much less implicit were the narratives employed by defence barristers that aimed to absolve the defendants by framing them as incompatible with the culturally 'deviant' image of rapists. By highlighting aspects of defendants' lives such as being a 'good father' or a volunteer, they drew on the problematic notion that **'good men don't rape'**. Similarly, narratives that aimed to create sympathy for defendants served to excuse them, even in relation to harmful behaviour they admitted to the court. For instance, when asking a defendant about his motivations for 'catfishing' the victim-survivor, the defence barrister referred to multiple aspects of the defendant's personal life including asking about his disabled child, his troubles at work, and the difficulties in his marriage.

## CHILD SEXUAL OFFENCES

Two of the observed trials related to child sexual offences. One was a historic case with two victim-survivors who were now adults, the other involved a child victim-survivor. In both

trials there were cultural narratives about **respectability** that drew on problematic ideas and stereotypes about working-class motherhood. These narratives portrayed them as **'bad mothers'** and in doing so worked to further undermine the victim-survivors by reflecting the persistent cultural narrative that "poor parents spawn damaged, antisocial children" (Gillies, 2007, p.8).

The 'bad mothers' narratives drew on problematic working-class stereotypes by asking questions that portrayed mothers as **'benefit cheats'**, as being **sexually excessive**, as **'failing to protect'** their children from domestic abuse, or as being **unable to 'cope'** with their children. All of these reflect deeply embedded pejorative ideas about working-class mothers in British society (Smart, 1992; Carrabine, 2001; Skeggs, 2005; Gillies, 2007).

## CASE STUDY – Trial 5

The victim-survivor in this trial was a child. As well as being portrayed as a 'benefits cheat', failing to protect her children, and as struggling to cope with her 'naughty' children, this mother was also implicitly accused of 'parental alienation'. During cross-examination she was asked about the timing of the report to the police in relation to her being annoyed with the defendant for cancelling planned contact with the children.

The questioning reflected pervasive cultural narratives that wrongly suggest mothers often make false child sexual abuse allegations against their former partners (Penfold, 1995; Trocmé and Bala, 2005; Birchall and Choudhry, 2021). These assumptions draw on gendered and classed narratives that position women as vindictive liars; such narratives have been traced back to the nineteenth century, where working-class children were thought to often make malicious allegations and were spurred on to do so by their mothers (Bourke, 2007).

The problem with these narratives is that they provide a concentrated image of the mothers' parenting styles which have been framed



through defence barristers' words with little means of being challenged. It vilifies the mothers, positioning them and their children as 'bad' and 'unrespectable'. It invites the jury to make moral judgements about the family and the 'type' of people they are, based on stigmatising cultural narratives formed from middle-class notions of respectability.

That victim-survivors can be undermined through narratives that impugn the moral character of other witnesses has important implications for research and policy, especially in relation to child sex offences trials. This is especially true in cases where the victim-survivors are still children at the time of the trial, because their cross-examination should be limited in scope and tone. Future research should therefore investigate whether non-abusing parents of child victim-survivors are routinely used as a proxy for the often brutal cross-examinations faced by adult victim-survivors in the courtroom.

## DIGITAL COMMUNICATIONS EVIDENCE

Digital communications evidence, such as text messaging and social media posts, was used to support rape myth narratives. It played a significant role in defence characterisations of victim-survivors' post-assault behaviour as irrational, especially in relation to continued contact with the defendant and the how, when and who of disclosing. Digital communications evidence also played a significant role in defence barristers pointing to inconsistencies to undermine victim-survivors' accounts. Defence barristers compared digital messages to victim-survivors' 'flawed' recollections in live testimony to 'prove' that they were at best unreliable or at worst liars.

In two cases there were messages that the prosecution argued amounted to 'confessions' to sexual violence. Through re-interpreting the language used in the messages and providing alternative meanings, the defence were able to cast doubt on the prosecutions' framing of them as confessions. The alternative meanings were bolstered through drawing on rape myths and cultural narratives (Daly, 2021).

## IMPLICATIONS

Rape myths remain a problem and more should be done to address them, including preventing them from entering trial narratives when they have no relevance.

Solutions must include a consideration of the impacts of cultural narratives as well. Without doing so, mechanisms that work to undermine victim-survivors based on their (perceived) background or identity will remain hidden and unaddressed.

Rape myths and cultural narratives are often deployed with subtlety. This suggests that myth-busting judicial directions may be unlikely to have the desired effect because the subtlety with which rape myths (and cultural narratives) are deployed causes them to become disguised and distorted in trial narratives, making them unrecognisable when cast against the plainly worded myths in judicial directions.

Proper scrutiny should be given to digital communications evidence to ensure only strictly relevant data is obtained. This is crucial because what might on the surface seem to be an innocuous comment contained within a digital conversation can be made damaging for victim-survivors through the narration of that conversation at trial.

A better understanding is needed of role and experiences of non-abusing parents in child sexual offences trials. A child should not be able to be undermined through impugning the moral character of their parents.

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