

TRIAL VENUE AND PROCESS: THE VICTIM AND THE ACCUSED

MUIREANN O'BRIAIN*

The Dublin Rape Crisis Centre (DRCC) provides a counselling and therapeutic service to the victims of rape and sexual assault. There are now 18 Rape Crisis Centres (RCCs) in the whole of Ireland, of which Dublin has the largest clientele. We treat 750 clients a year and we respond to 10,000 genuine counselling calls. These are calls to our 24 hour, 7 days a week telephone helpline. Calls are received from victims of sexual assault, survivors of child sexual abuse, and from family members and friends of victims. Of the clients we see in the Centre, 50% have suffered adult rape or sexual assault, 41% have suffered child sexual abuse, and 8% have suffered both child sexual abuse and adult assault. 12% of the people who access our counselling services are male, while 17% of those accessing the telephone helpline are male.

Rape and sexual assault have very serious consequences for the victims, with life-long consequences for those who do not access counselling and therapeutic services. Depression and psychiatric illness are common in such victims, and there is also a strong link between suicide and sexual abuse, particularly for young men.

It is for these reasons that the DRCC campaigned to have the jurisdiction for the trial of rape and sexual assault brought into the High Court and to be given the same status as the crime of murder. We have not moved from that position, and are supported in it by the Network of Rape Crisis Centres, which represents 17 of the RCCs in Ireland, including the DRCC. We know that rape is used as a weapon of war to humiliate and degrade women; it is the same urge to demonstrate power and control over another person that provokes a person to rape another. Our society has to place that type of act on a comparable level with the act of murder, because it removes the right of the victim to the application

* Chief Executive Officer of the Dublin Rape Crisis Centre.

of his or her free will. For the victim of a sexual assault, a part of their innermost being has been killed and it is proper that the law should consider serious sex crimes to be appropriate for trial in the Central Criminal Court.¹

Another reason for retaining the jurisdiction in the Central Criminal Court is that victims can have anonymity in Dublin which they cannot have on the Circuits. Anonymity is not only preserved by withholding of names from the press but also by being in a venue where the victim will not be recognised by locals. Furthermore, court accompaniment can be provided by the DRCC as part of its services to victims of rape and sexual assault. Other RCCs do not have the same supply of trained volunteers able to stay with a victim during court proceedings.²

There is currently a problem with delay in getting cases to trial in the Central Criminal Court, but adding cases to the criminal case-load of the Circuit Court will not solve that problem. Already the Circuit Courts have limited sittings, and only half of the period is allocated to crime. From the perspective of resources, it does not make a difference where the jurisdiction for sexual crimes is located, the burden of having buildings, judges, staff etc. is the same. But from the perspective of the victim, she/he is more protected in the High Court. Even the High Court on circuit is not an answer, because the High Court has to sit at times that the Circuit Court is not sitting, so there is a time problem. In addition, for rape and sexual assault cases, additional facilities such as video-linked witness rooms are required to be available (for victims under the age of 17 or by the leave of the court).

My colleague, Geraldine Connolly, will address the Working Group on the effect that a sexual assault has on the victim of such crime, and also on the effect of the experience of the judicial process on a victim.

¹ In the SAVI Report, discussed later, many individuals even reported cases involving minimal or no physical contact which were psychologically devastating.

² Victim Support will provide volunteers to accompany victims, but they are not specifically trained on matters of sexual assault.

I wish to present to the Working Group information about two pieces of research that may inform your deliberations, and to make some suggestions for your consideration.

In 1998, the DRCC published a comparative study of the legal process for victims of rape in 15 member states of the European Union, five of which were in-depth studies.³ One of the noteworthy matters in the study was the fact that in all the countries studied (with the exception of Denmark), the law on rape had been updated since 1989. The review indicated a modern-day concern at the level of sexual violence in society, at the fact that crimes of sexual assault affect both men and women, and at the fact that penile penetration is not the only form of rape. It is also noteworthy that in all of the jurisdictions studied, rape and sexual assault were considered serious crimes with maximum penalties ranging from ten years to life imprisonment. However, the report also found that an insufficient understanding still exists of the level of harm caused by rape, including the psychological impact and the cost to society.

Other findings of interest were:

- Delay is a major cause of dissatisfaction for complainants. However, the delay impacts more on those victims who are not kept informed of the progress of the investigation.
- Giving evidence in a trial about rape and sexual assault is very distressing for the victims of sexual crime. The research participants reported feelings of loneliness, humiliation and embarrassment. With the exception of Germany, participants reported feeling very anxious when testifying, with Irish participants feeling significantly less confident than others. Participants complained of attempts by the defence to misinterpret or manipulate their words, and to minimise the effect of the rape on them. Most interviewees said that the defence tried to show that

³ Bacik, Maunsell and Gogan, *The Legal Process and Victims of Rape: A Comparative Analysis of the Laws and Legal Procedures Relating to Rape, and their Impact upon Victims of Rape, in the Fifteen Member States of the European Union*.

the victim had provoked the rape. The report recommended measures to discourage the use of unduly hostile or aggressive cross-examination, and a prohibition on personal cross-examination by the defendant. Specialisation among judges was also recommended.

- The provision of separate legal representation for the victim was considered to be the single best measure that could protect the victim and her/his family throughout the trial process. In all of the member states studied, except for England and Ireland, legal representation was available to the victims of crime. A highly significant relationship was found to exist between representation by a lawyer and overall satisfaction by the victim with the trial process.

The second piece of research to which I would like to draw your attention is a national survey of Irish experiences, beliefs and attitudes to sexual violence. This research, known as the SAVI Report⁴ was carried out for the DRCC by the Royal College of Surgeons in Ireland. In a survey of over 3,000 persons, it was found that

- One in five women had experienced contact sexual abuse in childhood
- One in six men had experienced contact sexual abuse in childhood
- One in five women had experienced contact sexual assault in adulthood
- One in ten men had experienced contact sexual assault in adulthood
- Almost half (47%) of those who disclosed experiences of sexual violence in the study had never previously disclosed the abuse to anyone. The most common reason was shame and self-blame.

⁴ McGee, Garavan, de Barra *et al.*, *The SAVI Report: Sexual Abuse and Violence in Ireland: A National Study of Irish Experiences, Beliefs and Attitudes Concerning Sexual Violence*.

- Only 1% of men had reported the experience of adult assault to the Gardaí.
- Only 7.8% of women had reported the experience of adult assault to the Gardaí.

The DRCC statistics for reporting in 2001 (which would only cover the Dublin area and which includes child abuse cases) are that of 538 cases in which the reporting status was known, only 167 had been reported to the Gardaí. Clients were more likely to report rape if the perpetrator was a stranger; 45% of clients raped by strangers reported, whereas only 22% of those raped by relatives or boyfriends reported, and only 22% of date rapes were reported.

In relation to the after-effects, the survey found that those who had experienced sexual violence were significantly more likely to have used medication for anxiety or depression, or to have been a psychiatric in-patient, than those without such experiences.

In relation to the identity of perpetrators, the SAVI Report found that almost a quarter of perpetrators of sexual violence against women as adults were intimate partners or ex-partners. 30% of assaults on women were by strangers. Most perpetrators of abuse against men were friends or acquaintances, but 38% were strangers. The DRCC statistics echo these findings; we noted in 2001 that strangers represented 32% of the victim/offender relationships.

The overall level of sexual crime is very high in Ireland. Taking the SAVI findings in relation to the percentage of adult contact sexual abuse of women (20.4%) and men (9.7%) out of the electorate for 1997, we have 268,424 women who have suffered this abuse, and 138,269 men. Of those, the numbers who have suffered penetrative abuse are 80,264 women and 12,829 men. Yet hardly any cases come to court.

Given the level of sexual violence, a strong message has to go out that sexual violence is not acceptable and will be severely punished. To relegate these crimes to the Circuit Court would send a public message that rape is not a serious offence anymore. The publicity surrounding recent cases of marital rape and other sexual assault cases do help to raise

public awareness, and this is an important prevention tool. Much more public education needs to be done around the issue of ‘consent’, and court cases do provide occasions for public debate.

There is a great deal of concern among RCCs at the low level of convictions by juries in the Central Criminal Court. They know that complaints are not easily made by victims, and we can see that anyway from the reporting statistics. It would therefore be helpful if the Director of Public Prosecutions gave reasons for his failure to prosecute. If his reasons were known, RCCs would be able to explain them to the victim. Furthermore, if the prosecuting policies of the DPP in relation to sexual crimes were known, then RCCs would be able to prepare victims who reported the crime for disappointment.

The DRCC would therefore suggest to the Working Group that:

1. The jurisdiction for cases of rape and aggravated sexual assault should remain with the Central Criminal Court. This will indicate the seriousness of the crime, and operate as a prevention measure.
2. Complainants in sexual assault cases should be entitled to free legal advice without a means test.
3. In all cases of sexual assault the victim should be entitled to his/her own legal representation from the time the complaint is made. This would make trials less traumatic for victims.
4. Judges should be specially assigned to the hearing of cases of sexual violence, and should have special training for that issue. This would ensure that cases are dealt with expeditiously, and that the manner of questioning of the victim is controlled.
5. The Director of Public Prosecutions should be encouraged to give reasons for his refusal to prosecute on foot of a complaint of sexual assault.

The fair administration of justice means that the rights of victims must be taken seriously as well as the rights of accused persons. The protection and vindication of the rights of victims of sexual aggression require special measures that

take the intimate nature and traumatic effect of the crime into consideration.