

**THE ROLE AND EFFECTIVENESS FO THE ZAMBIA POLICE SERVICE IN  
THE INVESTIGATION OF THE CRIME OF RAPE IN ZAMBIA**

**BY**

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**2011**

## DECLARATION

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**THE UNIVERSITY OF ZAMBIA**

**SCHOOL OF LAW**

**THE ROLE AND EFFECTIVENESS OF THE ZAMBIA POLICE  
SERVICE IN THE INVESTIGATION OF THE CRIME OF RAPE IN  
ZAMBIA**

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**An Obligatory Essay submitted to the School of Law of the University of Zambia in  
partial fulfillment of the requirements for the award of the Degree of Bachelors of  
Laws (LLB)**

**APRIL, 2011**

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**JUDGE KABAZO CHANDA (Rtd)**

## **DEDICATION**

To my dear beloved wife Chitalu, My children Chilengi, Wika, Wana and Yuma. Thank you for always being with me for it could not have been possible to accomplish this research work without your spiritual love and invaluable tolerance of my prolonged absence from home and ever busy schedule. I will always be indebted for the sacrifices you have made for me for I am where I am because of your undying love, encouragement and the culture of hard work and discipline we have embraced as a family. I LOVE YOU MORE THAN YOU CAN EVER IMAGINE.

## ACKNOWLEDGEMENTS

First and foremost, I would like to thank the Lord God almighty for being my source of strength and guiding me through all trials and tribulations that life has to offer. Thank you for the potential that you put in me and for giving me the confidence to face each day. You are the God who makes a way where there is no way; you work in ways we cannot see. I will always be grateful for the gift of life that you have given me.

I wish to acknowledge my profound gratitude to my Supervisor Judge Kabazo Chanda for according me your intellectual guidance, relentless support, patience, kindness, understanding and invaluable advise. You are truly brilliant, exceptional and deserve great respect. I thank you.

To my best friends, Dominic Mwinamo, Saviour Nsomboshi, Martin Chinyama, Luke Lytone Chiwowa and my sisters Sombo Chinyama and Edinas Moyo, you are my true friends and will always be grateful to you for all the help. To all those that I have forgotten to mention by name, to you I say thank!

## **TABLE OF CASES**

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Emmanuel Phiri V The People (1982) ZR 77

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The Penal Code Act CAP 87 of the Laws of Zambia

The Police Act CAP 107 of the Laws



## **LIST OF ACRONYMS**

YWCA	Young Women Christian Association
VSU	Victim Support Unit
ZP	Zambia Police Service

## **ABSTRACT**

The Role and Effectiveness of the Zambia Police Service in the Investigation of the Crime of Rape is discussed in this Directed Research. This research grew out of an interest in criminal situations and the Police handling of such situations. Since rape constitutes one kind of crime where the victim is present during the crime and able to describe the criminal circumstances, it was chosen as topic of study.

The Researcher has had a long standing interest in the work of Police Investigations, and rape investigations have always required a good deal of interactional skill. Therefore, the study of the crime of rape allowed the Researcher a close study of situational dimensions of the crime; it further allowed the Researcher to study the interactional dynamics between the Police and the victim.

The research starts by discussing the purpose and objective for the establishment of the Victim Support Unit. Firstly, the paper analyses the larger situational institutions, examining the procedure to be followed by the victim of rape. Secondly, the research deals extensively with the work of Police detectives, focusing on their interaction with the Victim and investigating rape in the context of a bureaucratic organization. Thirdly, it gives an analysis on how the Police handle false reports of rape as it is important to deal with special consideration to the whole issue of lies in rape investigations, for even though false reports are relatively infrequent, they influence a good deal of police work and even the public attitude towards rape reports. Finally, the research is completed by conclusions drawn from the findings of the study and recommendations on the subject matter of the investigations of the crime of rape.

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# CHAPTER ONE

## INTRODUCTION AND BACKGROUND TO THE STUDY

### 1.0 Introduction

This study will examine the role and effectiveness of the Zambia Police in the investigation of the crime of rape<sup>1</sup> in Zambia. The cardinal issue will be to find out how a victim of rape is treated in the process of investigation. It will also consider whether to increase in the number of women assigned by law enforcement agencies to deal with rape victims, although there is no firm evidence that such women are more sensitive than their male counterparts for there is every reason to believe this to be likely true.

In this study, it will be important to explain why progress is made by the Police with regard to rape which does not seem to be duplicated as thoroughly among medical practitioners who carry out emergency room examinations. It may seem to be that the doctors foresee and resent the possibility of having to testify in court in rape cases – an imposition on them, but often a bonus for a police officer who will want to secure a conviction.

In order to understand the work of the police in rape cases, it will be necessary to examine the rape investigations in the context of the larger organization and the community. However, it is important to point out that the Police are not as rude and intimidating as they are often pictured to be. This is especially true of the Victim Support Unit which is often to the surprise of the victims, the most supportive and understanding of all agencies with whom the victims come in contact with.

With these thoughts in mind, the study will equally allow a close study of situational dimensions of the crime of rape and the interaction dynamics between the police and victims. The unique aspect of the crime of rape is that it is committed by men upon

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<sup>1</sup> Section 132, Chapter 87 of the Penal Code of the Laws of Zambia

women. To this extent, the study will discuss the role and effectiveness of the Zambia Police Service in the investigation of the crime of rape and therefore examine and make recommendations about future prospects on how investigations should be conducted.

Enforcement and regulation of traffic rules.<sup>2</sup> The aforementioned functions also apply to the Police Service in Zambia as enshrined in the Zambia Police Act and Force Standing orders.<sup>3</sup> In addition the Force Standing Orders also endorses the traditional functions of the Zambia Police. The duties of the Police Officers is to maintain peace and to see to it that laws are obeyed and the vulnerable persons are protected.<sup>4</sup> However, these duties and obligations have to be performed within the confines of the law and the procedure strictly adhered to. Rape is an act of sexual intercourse, using force or threat of force, by a man on a woman. The model statute for rape as drawn up by the penal code chapter 87 of the Laws of Zambia reads:

Section 132; any person who has unlawful carnal knowledge of a woman or girl without her consent or with her consent if the consent is obtained by:

- a) Force or
- b) Means of threat or intimidation of any kind or
- c) By fear of bodily harm, or
- d) By means of false representation as to the nature of the act, or
- e) In case of a married woman by personating her husband is guilty of a felony termed rape.

Any person who commits the offence of rape is liable to imprisonment for life.

Therefore, institutional approaches to the investigation of rape focus on the societal reaction to rape, mainly by the medical and justice institution. To some extent, the study

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<sup>2</sup> Mutulwa R. Sibusku, Policing the Police: in search of public control over the Police, A thesis submitted to the University of Zambia in partial fulfillment of the requirement for the award of the Bachelor of Laws Degree (LLB), Lusaka, 1982 – 1983. P1

<sup>3</sup> Zambia Police Act CAP 107, S.5

<sup>4</sup> Francis C. Nsokolo, Police Duties and Powers of Arrest, A discussion paper presented at the Human Rights sensitization workshop for Law enforcement officers at Lake Kariba Inns, December, 2002.

will only be discussing those studies that deal with the police, hospitals and the courts. Perhaps the best summary of the findings of this approach will be the medical profession which is somewhat aloof but improving in services to rape victims; the police are the big surprise since they are not as bad as people had assumed; and the courts are terrible. A victim of rape has the most difficulty in court because of the callousness not only of the defence attorney but also of prosecuting attorneys and judges and further, the victim seems more on trial than the suspect.

Once rape has been committed, the victim must decide what to do next, her options are either reporting the crime to the police or keeping quiet. If she chooses to report the crime to the police, the police will record a statement from her that will be the beginning of investigations. A medical report is issued to the victim following the alleged crime of rape and consequently, the victim will have to be examined by the medical profession who in turn will endorse their findings on the report. The report form will have to be taken back to the victim support unit. The duties of the investigators will be centered around investigating cases, preparing the cases for court and going to court. The investigations will always consist of talking to victims, witnesses and suspects and examining various types of possible evidence.

For this reason, it is common knowledge to assume without investigation that the police and the public or citizenry are in constant contact either directly or indirectly. However, as much as the police conduct their investigations in the crime of rape, they encounter a lot of logistical difficulties.<sup>5</sup> To this extent, according to statistics available at the Zambia Police Service Headquarters Victim Support Unit for the year 2009, 107 cases were reported and only 69 cases resulted in the suspects being convicted. On the other hand, the few number of rape cases reported might have been due to lack of attention by the police and ignorance at victims to report their cases to the police, especially for the reason that most rape victims are raped in their homes.

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<sup>5</sup> Zambia Police Act CAP 107



Law currently in force in Zambia on rape is sufficient but a number of disparities and procedural rules such as corroboration have been observed. Implementation of the standard in local legislation and domestication of International instruments has also proved to be a problem. One area where a disparity is manifest is the section of the penal code which deals with offences against morality,<sup>6</sup> procedural requirements for instance the need for corroboration as to the identity of the accused and commission of the crime to remove possibilities of false implications and fabrications of the story by the complaint in some cases has provided more protection to the perpetrators of rape than the victim.<sup>7</sup> The implication of this is that a lot of offenders who have genuinely committed crimes are not convicted because of legal technicalities. It has been observed that in circumstances where some form of corroboration is provided, the court may use its discretion and refuse to admit the evidence corroborating the commission of the crime.

Therefore, this research will be undertaken in order to determine what role the Zambia Police Service plays and whether there has been any effectiveness in the investigation of the crime of rape in Zambia.

## **1.2. Statement of the problem**

Legally, the Constitution of Zambia ensures that men and women are equal under the law and have the same protection.<sup>8</sup> However, the way of the law views men and women is often different from the way communities and families view men and women. Cultural approaches to the study of rape focus on a society's belief and value systems to explain why rape occurs. Men and women have been socialized differently in society so that one is dominant over the other, giving rise to a virtual rape culture. This culture can be seen in the social structure which places women in subordinate positions in almost every aspect of social life. As a result, rape has continued to manifest in most modern societies.<sup>9</sup>

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<sup>6</sup> Chapter xv of the Penal Code Cape 87

<sup>7</sup> Jackson Zimba V The People (1980) ZR 259

<sup>8</sup> Mutulwa R. Sibasuku, Policing the Police

<sup>9</sup> J. Daka. Sexual offences and how to deal with them. (Lusaka. Comfort Publishers, 2004. P67)

## 1.2 Objective of the Study

The main object of this research will be to examine whether Zambian law as it currently stands is sufficient on rape and the role and effectiveness of the Zambia Police Service in the investigation of the crime of rape. The specific research question will be:

- i) To explain the role and effectiveness of the Zambia Police Service in the investigation of the crime of rape.
- ii) To identify the procedure to be followed when investigating the crime of rape.
- iii) To identify, examine and analyses the existing law in Zambia that governs the crime of rape.
- iv) To identify and discuss specific problems and the inadequacies encountered in the investigation of the crime of rape.
- v) To provide suggestions on how the existing law governing rape can be reformed to meet the challenges of the 21<sup>st</sup> Century.

## 1.3 Definition of concept

Rape is the use of sexual contact by one person to another against her<sup>10</sup> will and may include such acts as forced penetration of the vagina. Rape is defined according to the penal code of Zambia as “the act of having unlawful carnal knowledge of a woman or girl, without her consent or with her consent if the consent is obtained by force or by means of threats or intimidation of any kind or by fear of bodily harm or by means of false representations as to the nature of the act in the case of a married woman by impersonating her husband”.

Furthermore, the definition of rape was expressly laid down by the House of Lords in the case of **Director of Public Prosecutions v Morgan**,<sup>11</sup> that “.....a man commit the actus reus of rape if he has unlawful sexual intercourse does not consent to it. The intercourse

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<sup>10</sup> Section 132, Cap 87 of the Laws of Zambia

<sup>11</sup> (1975) 2 All ER 274

must be per vaginam.” Moreover, in the case of **R V Cooper**<sup>12</sup> it was stated that “rape is the penile penetration of the victim’s vagina without the consent of the victim.”

### **Canal Knowledge**

The court defined carnal knowledge in the case of **Papdimitropoulos V R**<sup>13</sup> as, “the physical act of penetration which is the entry of the penis into the vagina and the slightest degree is enough and where the penetration is per vagina the hymen need not be broken.”

### **Corroboration**

Corroboration was defined by the court in the case **RV Baskerville**<sup>14</sup> as evidence which affects the accused by connecting or tending to connect him with the crime. In other words, there must be evidence which implicates him, that is, which confirms in some material particular not only that the crime has been committed but also that the prisoner committed it.

### **Mens rea**

This is a latin phrase, meaning the mental element in a crime. It can also mean the blame state of the mind. It differs from crime to crime. The fundamental principle of mens rea states that the defendant should be held criminally liable for events or consequences which she or he intended or knowingly risked.<sup>15</sup>

### **Actus Reus**

This is the prohibited or harmful conduct or omission which is considered to be criminal.<sup>16</sup>

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<sup>12</sup> (1994) Crim. LR 531

<sup>13</sup> (1957) 98 CLR 249

<sup>14</sup> (1916) 2 K. B 658

<sup>15</sup> E S Kulusika Text, cases and materials in criminal law. (Lusaka: UNZA Press, 2006) P. 34

<sup>16</sup> E.S Kulusika Text, Cases and Materials in Criminal Law

## **1.4 Research Methodology**

The major method of data collection that was desk research. The findings of this research were based on information from books on the subject, enacted legislation and judicial decisions, articles from journals and newspapers as well as student dissertations were referred to. In addition interviews with officers concerned with rape at the Victim Support Unit.

## **1.5 Research Questions**

- i) What role does the police perform in the investigation of a crime?
- ii) How effective is the victim support unit in dealing with complaints of the crime of rape?
- iii) How are complaints made to the Zambia Police Service?
- iv) How are complaints handled by the Zambia Police Service?

## **CHAPTER TWO**

### **THE SITUATIONAL CONTEXT UNDER WHICH RAPE OCCUR AND HOW THE VICTIM IS TREATED BY INTERACTIONAL INSTITUTIONS**

#### **2.0. INTRODUCTION**

The foregoing chapter discussed the purpose and objectives of the study that is to determine the role and effectiveness of the Zambia Police Service in the investigation of the crime of rape. In this Chapter, we consider the larger situational context in terms of an interactional institution, examining the general types of situations in which rape occur and attempting to explain why rape is more likely to take place in one type of situation than another. It is imperative to state that police question touch each one of us so intimately in our day to day life, in our personal liberty and in our self respect. The character of the nation is so profoundly influenced by the nature of the control to which it is subjected and that a due appreciation of the scope of police functions, a proper knowledge of the origin and extent of the power and duties delegated to the police service must possess a more than academic interest.<sup>17</sup>

Therefore, in order to understand how the Zambia Police Service conducts their investigations, it is important to first understand and appreciate how and where the Police in Zambia draws its authority to carryout its mandate. In this regard, the constitution of Zambia, the Zambia Police Act and the Zambia Police Standing Orders was referred to.

#### **2.1. DEFINING THE SITUATION**

In rape cases, it immediately becomes apparent that there are different definitions of the situation depending on the interaction role of those involved. The victim certainly does not see the situation in the same light as the rapist, and all others involved, the Police, the

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<sup>17</sup> W.L. Melville lee(captain), A History of police in England, Methew and co. 36 Essex Street W.C London 1901 p. ix.

friends and relatives of the victim (and suspect), the defence and prosecuting attorneys, have their own peculiar slant on the rape situation.<sup>18</sup>

## 2.2 AT HOME

To a lesser extent victims were raped when they were at home. In the context of public interaction, the home is a refuge from the kinds of contacts that are possible in transit situations. Whereas it is possible to walk up to a person on the street and ask for the time or day, one cannot do the same thing to a person at home without going through an entrance ritual at the home's threshold. However, once access to the home has been gained, there is usually enough protection from outside interference so that a rapist is relatively safe. This is because one's own home is considered to be a private matter, even screams for help may be interpreted to be a domestic quarrel, not subject to interference, as would be the case in the public domain.<sup>19</sup>

One way to gain access through entrance ritual in a home and another is simply to break or walk in. The first tactic requires some kind of "entrance story" so that one person will allow another to cross the threshold. In situations where the victim is an acquaintance of the rapist, then only a minimal entrance story is required, such as "just seeing you" but when strangers want in some entrance story of a more elaborate nature is necessary.<sup>20</sup> In this scenario a man had come to the victim's home to schedule the installation of a cable television connection. After discussing the installation, the man asked the victim for a date, but he was refused. The man pushed her down on the bed and attempted to force the victim to orally copulate him and was unsuccessful. Then he raped the victim. In another related incident, a man was taking a survey on a plot in Matero and was later interviewing the victim and the victim went to get the water, the man grabbed her from behind and dragged her into the bedroom at knife point. He then taped her eyes and hands in front of her.

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<sup>18</sup> W.L. Melville Lee (Captain), *A History of Police in England* (1959), p 108

<sup>19</sup> Goffman (1963), p. 43 - 44

<sup>20</sup> Simmel (1950), p. 140 - 141

In both of the above incidences, it can be seen that the rapist were in no particular hurry for once they gained access, they did not feel anyone would intrude upon what was considered to be a normal "at home situation."

Besides gaining entrance through an entrance story and accompanying ritual, rapists often broke in or simply waked in. The following two cases illustrate these other intrusions into "at home" situation. Presenting himself as a Salesman, the rapist knocked on the victim's door. She told the man she was not interested and began closing the door. He put his foot in the door and forced his way in, and the victim began screaming. The rapist threatened to cut her throat if she should not be quiet, and then raped her on the bed.

The victim was lying on the bed after taking a shower, covered with a towel. The rapist climbed through the kitchen window and turned up the volume on the victim's radio cassette. He then entered the bedroom and turned off the light and told the victim that he would kill her if she saw his face. Then he attempted to have anal intercourse with the victim, but failing that he raped her.

### **2.3 BEDTIME**

However, if one receives a phone call during what are considered normal hours in an "at home" situation, even petty matters can be the reason for the call. However, during the bedtime hours, only important (or pre-arranged) intrusions are allowed. In all of the rape cases examined during the bedtime situations, only one involved going through an entrance ritual. A young man knocked on the bedroom window of a twenty-five year old woman who let him in and later the young man raped the victim.

Typically, in a rape during bed time situation, the victim is awakened by the suspect who then rapes her. Entrance is usually accomplished by entering an unlocked window or door or forcing entry by slipping a lock. In a number of cases, the rapist was already nude when he awoke the victim as illustrated by the following scenarios involving rape during bedtime situations.

After entering through an open door, the rapist took off his clothes in the living room. He then climbed into the bed with the victim and then awakened her, saying that he was going to have sex with her and when the victim refused, the rapist held her by the mouth and then raped her. In another related scenario, the victim was sleeping in bed when the rapist entered the room and placed a dress over her head. He said, “don’t move, I have a knife,” placing a knife at her throat. Then he stood up and undressed, laid her on the bed, and then raped her. All these scenarios occurred in a compound called Chibolya notoriously known for drug abuse in Lusaka.

During the “bedtime situation”, people are unconscious, and unless there are special circumstances, they do not expect to be bothered while asleep. In all of the rapes that happened in 2009 during the bedtime situations, the victim was awakened by the suspect who then raped her. Entrance is usually accompanied by entering an unlocked window or door or forcing entry by slipping a lock. In such a situation, the rapist is at an advantage, since the victim is groggy, then terrified. Moreover, the victim is often nude, and so there is not even the time element where help may arrive while the rapist is attempting to undress the victim as illustrated by the case of **Rex v Young**,<sup>21</sup> where it was ruled that a sleeping woman couldn’t consent.

## 2.4 THE PLACE OF RAPE

The setting for rape situations can be divided into two locations: the place of the initial contact and the place of rape. By comparing the site of the initial encounter with the site of rape, it was found that the rapist moved the victim from one place to another. By and large, the movement in rape cases is from the public domain to some secure setting. If victims are initially encountered at home, they are raped there, as would be typical in “at home” and “bedtime” situations. However, if the initial meeting is in a setting where others can monitor the activities of the victim and rapist, or are likely to monitor their

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<sup>21</sup> [1878]12 Cox 311



behaviour, the rapist takes the victim elsewhere as 'illustrated' by the case of **R V Sabenzu**<sup>22</sup> where the complainant said that she was in a party of School Children retaining home from school when they met the accused, who caught her arm and carried her a short distance into the bush and there raped her.

## **2.5 RAPE SEQUENCE**

Through police investigations, the sequence of rape interaction was discovered in the terms of the following:

### **2.5.1 CONTACT THROUGH INNOCENT PRESENTATION**

In those cases where the initial presentation is that of a rapist, the victim is either sufficiently isolated so that she cannot rely on the social control provided by others in the situation to prevent her being forced into further isolation so that rape can be made or she is already isolated so that rape could occur.<sup>23</sup> Otherwise, the rapist must be cognizant of the situational circumstances and the interactional properties in order to hire the victim into willingly going with him to a situation where rape is possible.

### **2.5.2 REVEALING INTENTIONS**

Having isolated the victim, the next step was the revelation of intentions by the rapist. This involves "breaking frame" when the rapist shifts into a rape mode. The various frames that go to make the sense of the different situations where women are raped are broken. Whatever the frame before the rape assault, as soon as the assault is understood to be a serious attempt of rape, the old frame is broken and the interactors are in a rape frame. In other words, the victim of rape is a victim because she acts in accordance with what the situation dictates, just as in any other situation.<sup>24</sup>

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<sup>22</sup> [1946] CR App.122

<sup>23</sup> W. Ann, Burgess and Lynda Lytle Holmstrom (1974) rape: Victims of Crisis. P 189

<sup>24</sup> MacDonald, John (1971) rape offenders and their offenders. Springfield P312

The revelation of intentions serves as the incident that breaks the frame of the situation, but at the same time, it serves to define the new situation along with the new frame that provides the sense of what is going on.<sup>25</sup> Typically, the rape victim accepts the entire definition of the situation, using the new frame as a device for guiding her actions, and the action she typically sees to be appropriate – or practical – is to submit to the rape as dictated by her understanding of the situation. The revelation of intentions in both acts and words, usually is enough to cow the woman into being a submissive victim.

### 2.5.3. FORCE AND THREAT OF FORCE

In looking at the use of force, we can examine three patterns. First, there was the use of weapons, mainly knives and guns; secondly, there was actual force, usual strong-arm; and finally, there are threats of violence that are spoken or used in conjunction with actual force. Therefore, the most common type of force involved dragging, throwing or pushing the victim but not actually harming her. In other cases it was discovered that a victim could be held firmly by the arm while the rapist held a knife to her throat and told her to shut up or he would cut her throat. This was further illustrated by the case of **Tembo v The People**<sup>26</sup> where the complainant stated that the accused grabbed her with his arms and pushed her to the ground and raped her. Finally, looking at verbal threats it was discovered that this involved the rapist telling the victim that he would harm or kill her if she did not submit as illustrated by the case of **Emmanuel Phiri v The People**<sup>27</sup> where the accused forced the victim to the ground, beat her up and threatened her with death if she refused, and had carnal knowledge of her without her consent.

### 2.5.4 THE VICTIM'S REACTION

The victim appears to have “frozen” from fright for the most part. It was not the case that the victim “relaxed and enjoyed it,” but rather that there was a stark terror that immobilized the victim. When the victim was being raped, all she wanted was for the

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<sup>25</sup> MacNamara. D (1977) sex, crime and the Law. New York: Macmillan. P68

<sup>26</sup> [1966] ZR 126

<sup>27</sup> [1982] ZR 77

rapist to leave without hurting her and by accepting the definition of the situation as put forth by the rapist, she was able to do that. Those who reported that they “struggled” with the rapist gave some resistance, but usually this consisted of the victim trying to free herself from the rapist. The victims explained that as soon as they began resistance, the rapist would say or do something that would stop their “struggle”.<sup>28</sup>

Similarly, other women would scream and this action clearly indicates that the victim does not want the rapist attacking her, it is more of an indication that the victim is helpless and terrified than an effective resistance. Hitting, biting and kicking, on the other hand, are clear signs of resistance in addition to showing something other than screaming. In effect, the victim is sanctioning the rapist for acting inappropriately in the situation – the situation she is defining.<sup>29</sup>

Furthermore, the procedure to be followed by the victim of rape was that she was supposed to lodge a formal complaint at the Police Station who in turn would issue a medical report form.<sup>30</sup> Typically, the victim was then to be taken to the hospital for medical examination. To this effect, the study of some *Zambian* cases on rape have indicated that procedural requirements under the law such as corroboration tends to work against the victims and in this connection tends to give more protection to the offenders.

Corroborative evidence is any information that supports the statement of the complainant and it is independent of the statement of the complaint but it should not be different. It should show that the crime was committed and it should also point to the accused as the person who committed it. In this regard, good corroborative evidence is the opinion of a medical doctor. In the absence of a medical report the learned **Judge Baron**, the then deputy Chief Justice of Zambia, in the case of **Kalebu Banda v The People**<sup>31</sup> gave an example of corroboration in a rape case. He said “thus in a rape case failure to obtain medical evidence when there was a duty to do so means that, the court must proceed as if

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<sup>28</sup> Bohmer, Carol. “Judicial Attitudes Towards Rape Victims.” *Judicature* 57 P. 303 -307

<sup>29</sup> Brownmiller, Susan, *Against our (15) Will: Men, Women and Rape* New York: Simon & Schuster (1958), p.118

<sup>30</sup> Form 32 of the Zambia Police Service Standing Orders

<sup>31</sup> [1972] ZR .264

a medical doctor had examined the victim and had found no evidence that force was used, nor any evidence of sexual intercourse.” Therefore, a medical report is of prime importance in any rape case as it corroborates the evidence given by the victim.

The aspect of procedural requirement of corroboration was further canvassed in the case of **Emmanuel Phiri v The People**.<sup>32</sup> In this case the court held that in sexual offences there must be corroboration of both the commission of the offence and the identity of the offender in order to eliminate the dangers of false complaints and false implication. Therefore, in sexual offences the judge should warn himself against the danger of convicting on uncorroborated evidence and the record must show that this was done. This principle was further elucidated in the case of **Nsofu v The People**<sup>33</sup> where the court stated that the corroborated evidence serves to satisfy the court that it is safe to rely on the complainant.

The requirement of corroboration has constrained efforts aimed at combating rape. This is because the need for corroboration implies that a large number of offenders who have genuinely committed rape are not convicted because the element of corroboration is missing. Thus procedural requirements, under the law tend to provide a shield to rapist who is left at large to continue committing rape cases. In circumstances where corroboration is provided the court uses its discretion and refuses to admit the evidence as corroborating the commission of the crime.<sup>34</sup>

The case of **Zimba v The People**<sup>35</sup> supports this proposition. In this case the appellant was convicted of rape. The evidence against the appellant was that he was alleged to have seized a woman in the bush and raped her. The woman was there after being seen to be crying by an independent witness. The complainant stated that during the course of the alleged rape she sustained scratches. It was contended by the that in the circumstances

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<sup>32</sup> [1982] ZR.77

<sup>33</sup> [1973] ZR.103

<sup>34</sup> WILDA Gender Bias in the Zambian System. (Lusaka: WILDAF, 1994)P.5

<sup>35</sup> [1978] ZR 44

there was complete lack of corroboration and the evidence of distress may be enough to amount to corroboration. The court quashed the conviction and set aside the sentence.

Furthermore, in **Machilika v The People**,<sup>36</sup> the appellant was convicted of rape, A doctor conducted a medical examination and spermatozoa were found. The court held that since spermatozoa can live for several days in the vagina, the medical evidence was corroborative of the fact that the complainant, had sexual intercourse with the accused but simply evidence that she had sexual intercourse with someone within a period of days prior to the medical examination. The court set aside the conviction.

It is clear from the decided cases cited above that the requirement for corroboration is one of the weakness that has led to the escalation of rape in Zambia accompanied by the inefficiency of the investigative wing of the Zambia Police Service. The discretionally powers that the judges are given to reject the evidence given by the complainant for want of corroboration has hindered efforts aimed at reducing the prevalence of rape in Zambia. Perpetrators of rape are acquitted even if they genuinely committed the offence. Legal technicalities coupled with the discretion of the judges have tended to work against the victims of rape.

## CONCLUSION

The social processes within a rape encounter are far more complex and subtle than to be glossed as mere violence. True, violence and threat of violence are salient features of rape, but when we examined rape situations, we found that actual violence was infrequent, aside from the sexual assault itself. Rather, we found “framed assumptions” or understandings that victims and rapists have about the situation. To the extent that the frame of the situation proffered by the rapist dominates, a rape would be completed. However, to the extent that the frame of the situation is a non rape one, not only would be left without recourse to violence, for he was seen to be in violation of the situation – not

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<sup>36</sup> [1978]ZR 44

the victim. Therefore, rather than dwelling on the violence, the researcher attempted to learn more of the social circumstances in which rape occur.

## CHAPTER THREE

### THE POLICE INVESTIGATION OF RAPE

#### 3.0. INTRODUCTION

In this chapter we examined a situation once a rape has been committed, the victim must decide what to do next. Her options used to be either reporting the crime to the police or keeping quiet. If she chooses to report the crime to the police, she risks public disclosure and the attending stigma associated with a rape victim.<sup>37</sup> More recently the victim can choose a third alternative, that of reporting the rape to the **Young Women Christian Association (YWCA)**. If this third alternative is taken, she may decide after counseling to report the rape to the police. Whatever the case, though, the police are dependent on the victim's decision to report the crime herself or through a third party.

In order to understand the work of the police in rape cases, it was necessary to examine the rape investigations in the context of the larger organization and the community. As part of a police bureaucracy, the men and women assigned to investigate rapes were part of a network that involved organizational duties and in that context of working relationships, departmental policies, and allocated resources proved to be inadequate. In the context of the larger community and society as a whole, there exists an entire culture of beliefs and prejudices over which the police have no control, but with which they must deal in the course of their work. Even the best investigators must contend with the social realities they encounter, and no amount of training, insight, or experience by detectives can offset ungrounded societal beliefs concerning rape. Likewise, the police act in concert with other agencies of the criminal justice system. Most importantly, they must deal with the **Director of Public Prosecutions (DPP)**<sup>38</sup> and its requirements for legal prosecution of offenders as well as the informal requirements that are pertinent to rape cases.

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<sup>37</sup> Goffman, 1963; Dukes and Mattley, 1977 P.66-67

<sup>38</sup> Article 56 of the Constitution of Zambia CAP1

### **3.1. THE VICTIM SUPPORT UNIT**

The Unit responsible for investigating rape cases is called the ‘**Victim Support Unit**’. In addition to handling rape cases, which make up the vast majority of their cases, this unit also handled other types of crimes dealing with “sexual offences.”<sup>39</sup> Included in these other offences were crimes related to rape. Other offences not necessarily related to rape, such as defilement, incest, child molesting and obscene phone calls were also handled by the Victim Support Unit. However, the vast majority of their work consisted of investigating sexual offences such as rape cases, and many of the minor non rape cases they received were often handled in the office with little expenditure of investigative time.

#### **3.1.1. ORGANISATION**

At the time of the research the victim support Unit was organized into two basic parts, investigation and administration. One Chief Inspector served as administrator and seven investigators worked as detective investigators. The unit also had one secretary to type the reports and act as receptionist. Four of the investigators were women and three were men.

The Chief Inspector’s duties consisted of allocating cases, coordinating investigations, and screening the cases that came to the Unit. The allocation of cases involved determining which of his seven investigators had the time to take a particular case, assessing the amount of time a given case would take, and determining whether a case was part of a series an investigator was already investigating. If a new case appeared to be part of a series, the allocation was part of coordinating investigations, but sometimes it was not apparent that a given case was part of a series until the case had already been assigned. In situations where, after allocating cases, the Chief Inspector found that two or more different cases had been given to different detectives but were probably by the

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<sup>39</sup> Maguire, M., Morgan, R. and Reiner, R. (eds), *The Oxford Handbook on Criminology* (3<sup>rd</sup> ed). Oxford University Press (2002), P.321



same suspect, based on preliminary evidence, he would then coordinate the investigation so that either a single investigator would be given all of the cases of a single series or the different detectives would work together on the cases.

Finally screening cases involved the Chief Inspector in going over all incoming cases to determine which cases would require an investigation and which ones were relevant to the Victim Support Unit.

In addition to the supervision of the line work, the Chief Inspector also carried out mundane administrative functions.<sup>40</sup> Included in these other functions were scheduling vacations passing on policy coordinating activities with other departments at division level and reviewing the various kinds of paper work generated by his unit or the department if things became especially busy, the Inspector would sometimes have to handle a case himself or assist one of the investigators.

The duties of the investigators were centered around investigating cases, preparing the cases for court, and going to court. The investigations consisted of talking to victims, witnesses, and suspects and examining various types of possible evidence, including reports of other cases. The preparation of cases for court was usually routinized in the writing of case reports. Most cases did not actually go to court, either because the suspect was not arrested or identified, the Division Prosecution Officer would not accept the case.<sup>41</sup>

### **3.1.2. ROUTINES**

In order to understand the actual work of the Victim Support Unit on a day-to-day basis, we looked at the routines of the office. This provided the context for what transpired on

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<sup>40</sup> Section 158 of Zambia Police Standing Orders (2009 edition). P.157

<sup>41</sup> Rossett and Cressey (1976) P. 89

an ongoing basis and showed how the process of rape investigations were operationally organized.<sup>42</sup>

The setting of the Victim Support Unit was in an unpartitioned rectangular office housing the seven investigators, the Chief Inspector and other officers. One doorway led to the office, connecting to the other details and to a hallway. There was little privacy to interview victims, Witnesses, or suspects, and even though there was enough room for the necessary desks and files, there was no other space to isolate an interviewee from the others. Officers from the other investigative units and others going to and from the other units' offices were moving in and out of the Victim Support's area, giving the space even less privacy.

### **3.1.3. TRAINING AND BACKGROUND**

Given the routinization of detective investigations, even of rape cases, it is difficult to maintain a constant unique concern for the special anguish of rape victim.<sup>43</sup> It is one thing to be cognizant of the degradation and humiliation of rape victims and to attempt to extend to them a special kindness and consideration, and it is another thing to do it constantly. In order to maximize their effectiveness in dealing with the high degree of emotional strain involved in rape cases, the Victim Support Unit was extremely selective in recruitment of new members.<sup>44</sup> Assignment to the Unit was not random and did not occur simply because there was an opening and someone happened to be available to fill the vacancy.

The selection process for police detectives in the Unit as a whole was to take inquiries officers and reassign them to investigative work in one of the investigative units. However, selection for the Victim Support Unit was from other detective units. Those who were chosen for rape investigations had to have demonstrated skills as investigators, a demonstrated rapport, and the "personality" to fit in the Victim Support Unit. The

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<sup>42</sup> Rossett and Cressey (1976) P. 38

<sup>43</sup> Section 44 of the Zambia Police Standing Orders (2009 edition), P44

<sup>44</sup> Sanders (1977) P. 152

“Personality” to fit in with the other detectives appeared to be some understanding of the special status of a rape victim and a willingness to make the extra effort to support the victim in addition to all of the other investigative duties.

The training of new Victim Support Unit investigators was both formal and on the job. The formal training involved taking special classes offered at Lilayi Police Training College and various workshops given throughout Zambia.<sup>45</sup> At the same time, the new investigators would be assigned to work with an experienced detective who would show them how to deal with the various sex crime investigations.<sup>46</sup> Additionally training for all of the units detectives was an ongoing process, and it was not unusual for any of the investigators to be gone for several days or even a weeks’ special schools. The information gained at the school was disseminated to other members of the Unit by those who attended. In this way, the rape investigators became some of the most highly trained officers in the Zambia Police.

#### **3.1.4. DELICATE ENCOUNTERS**

The heart of the work of the Victim Support Unit is the investigation. And the heart of the investigation is the interview with the victim. In all investigations, the detectives must have information, and given the nature of rape and the victim is the primary source of this information.

In burglaries, the victim rarely sees the burglar, and in homicides, the victim cannot report what he saw. But in rape, the victim can describe a suspect, identify the time and location, and sometimes even name the rapist. The problem, from the police point of view, is to enlist the victim’s cooperation in identifying the rapist and in staying with the case through conviction.

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<sup>45</sup> Personnel in the Zambia Police Service are trained at Lilayi Police College paramilitary and Kanfinsa Mobile Unit as explained in Section 48 (3) of the Zambia Police Standing Orders (2009 edition), P.46

<sup>46</sup>Marsh and (6) Caplan (1979) P.3

### 3.1.5. VICTIM STIGMA

A recurrent finding in studies of rape victims is that the victim is somehow held responsible for her victimization by society.<sup>47</sup> It is not just that the general society often suspects the victim as much as the rapist, but the Criminal Justice System itself has been found to be not only unresponsive to victim needs but to persecute the victim.<sup>48</sup> Often the Police are seen as the least professional of Professionals in the context of medical examiners and attorneys in the court, and they are likely to be considered the least prepared to deal with victim trauma. However, a number of studies have found that the police are not only considerate of the victim, they are more so than any others in the Criminal Justice System.<sup>49</sup>

To understand the police handling of rape victims, it is important to understand the practical concerns of the police. The police want to solve cases, and in order to solve the cases they need, the information. If the victim is not cooperative they will not get the information to solve the cases. This simple yet crucial fact is often overlooked when discussing rape investigations, but it explains to a great extent why the police, especially the rape investigators, cannot afford to handle rape victims in a clumsy, inconsiderate, and understanding of the plight of the victim. They understand it very well, for if they did not they would not know how to handle victims to maximize their cooperation. If they blamed the victim and / or acted towards the victim as though they blamed her, they would lose the best source of information they have. Moreover, they would feel a great deal of compassion for the rapist since the victim was to blame, but the investigators in this research clearly did not show such "understanding" for the rapists. They saw the rapist to be responsible for his act and due any punishment he might receive, and they pursued the rapist vigorously as vicious, evil criminal, not as a misunderstood man who did not know what he was doing. What theories of understanding concerning rapists they did examine were those that would help them catch, not help, rapists. Thus, in dealing

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<sup>47</sup> Hursch, (1977) at P.49

<sup>48</sup> Bohmer, (1974) at PP303 – 307 and Robin, (1977) at PP136 - 153

<sup>49</sup> Marsh and Caplan (1979) at P. 3

with both the victims and rapists, the police were always practical to the end of solving cases.

### **3.1.6. GETTING THE INFORMATION**

Information gathering centres on establishing a case and identifying the suspect. Establishing a case refers to identifying the elements of rape from a legal and empirical point of view and obtaining a clear description of the events in the rape case. The legal requirements involve establishing that penetration occurred and that this was done against the will of the victim. The empirical requirements of establishing a case involve determining whether or not the rape actually occurred and securing the necessary physical evidence. The physical evidence usually consists of the findings of the medical examiner,<sup>50</sup> this aspect of the case was handled by others than the detectives. All the investigators do is to make sure that the physical evidence is properly stored and recorded.<sup>51</sup> Likewise, detectives interview witnesses to establish cases and identify suspects. All in all, though, the basic technique was the interview, checking it against other information gathered by the investigators was cardinal.

The police are oriented to the end of solving a case, and their actions must be viewed in that context. It was necessary for them to allocate their resources so that they could maximise arrests that would result in a conviction. Cases which were in one way or another weak were given a lower priority than the ones which were strong, there were a number of criteria for assigning a case the status of being weak or strong. The following elements were among those considered.

- (a) Status of the victim
- (b) Status of the information
- (c) Status of the case for conviction.

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<sup>50</sup> BMA, Medical Dictionary (2002), P. 459

<sup>51</sup> Training of Zambia Police Service Personnel

Often these elements were interwoven, and at one point or another one complaint of the investigators was that they often had bad victims. For the detectives, a “bad” victim could be one of several things but there were three main types:

- (i) Victims of questionable character
- (ii) Victims in questionable circumstances; and
- (iii) False victims.

All of these victims were considered true victims as opposed to those who lied about being raped, but because of some social or situational characteristics were not considered to be very good cases. By and large, the judgment was not so much a moral one on the part of the investigators as it was a practical one, and by examining cases in which these different types appear we can see the difficulties these victims posed for the police.

Victims who were considered bad by the police investigators consisted of a small group among all rape victims. Most victims of rape who were traumatised by the assault acted emotional, disoriented, moody, or mentally disturbed; but these victims were considered normal by the police. A “bad” victim was the one with a pronounced sexual history making up questionable character. Such victims were not considered emotional and often were the most precise in providing information leading to the identify of the rapist, but because of their assessed moral character were not believed to be very good victims, especially if a case came to court. The most common victim of this type was a prostitute; often the rape was in the context of the prostitute’s business.

### **3.1.7. IDENTIFYING AND ARRESTING THE SUSPECT**

The two major types of rapists who were identified were the “occasional” and “series” rapists. The occasional rapist included those who would take advantage of some opportunity to rape a victim, but did not do so with any degree of regularity or identifiable pattern. Usually when a victim knew the identity of a rapist, the rape occurred in the context of a situation where the rapist assaulted the woman on the spur of

the moment in a situation that was opportune to do so. Since the victim knew the identity of the rapist, it was a simple matter to make an arrest.<sup>52</sup>

The series rapist, on the other hand, provided the police with an identifiable pattern that served as an investigative lead. Rarely was a series rapist known to the victim, either because he hid his identity or because he chose victims who did not know him. However, the typical series rapist committed a large number of rape in a particular style, and from this style and the pattern of the assaults, the police could narrow down the suspects and make an arrest.

### **3.1.8. ARREST AND INITIAL INTERVIEW**

Once a suspect was taken into custody either by the investigators or by a general duties officer, a detective would interview him, hoping to obtain a confession<sup>53</sup> surprisingly most suspects agreed to talk to investigators, even after they were advised of their rights to keep quiet and have a lawyer present during questioning. Of the interviews I attended with the investigators, of the suspects demanded that a Lawyer be present or were reluctant to talk, and none confessed. Usually suspected rapists would either explain “their side of the story” or deny the rape altogether.

The instances where rapists would “tell their side of the story” was often set up by the investigator to encourage the suspect to talk.<sup>54</sup> Essentially they would say something to this effect. “This woman has claimed you raped her. Now I don’t know whether this is true or not, but I have got a lot of evidence that indicates you have. Of course that’s only one side of the story, and I don’t think it’s fair to you if I don’t hear your side.”<sup>55</sup> By and large, the detectives were not so concerned about a sense of fair play, but there were enough cases where after the interview the detectives decided that a suspect was not guilty either because of the nature of the circumstances or because they had the wrong man, that

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<sup>52</sup> Interview: face to face oral interview held on 14.01 2011 with Niza Nyirongo, Investigator in the Victim Support Unit

<sup>53</sup> White R & R 508; Tippet R7R 509; Archbold 36<sup>th</sup> Edition Para 1128

<sup>54</sup> Muwowo (1965)ZR 91

<sup>55</sup> Ping Lin [1976] AC 574, [1975] 3 ALL ER 175 at 178

at least they listened to what the suspect had to say. It was not so much that they kept a finely balanced sense of justice but rather that they had a finely tuned sense of suspicion that could zero in on an inconsistency in what the suspect said and what a victim and or witnesses had said. Typically however, the suspect side of the story was elicited so that the detectives could give him enough rope to hang himself.<sup>56</sup>

Denials of involvement altogether were different from the “suspect’s side of the story” in that suspects denied being with a woman, knowing a woman or having intercourse with a woman. Unlike those who tried to explain “their side”, denials of rape did not admit to having sexual relations or ever being with a woman at first anyway. Suspects who maintained a denial story and stuck with it were difficult to do anything with. However, often a suspect would begin with a total denial and end up with “his side of the story”. For example, in an interview, the suspect claimed he had not had sex with a woman, was not with the woman and did not know her, claiming he had been minding his own business when the police arrested him. When the detective pointed out that several witnesses saw the suspect with the victim, he changed his story slightly to explain why he was with the victim. By the end of the interview, the suspect had changed his story to the point where he admitted knowing the woman, being with her, having sex with her, and hitting her, but still denied raping her. When the investigator asked the suspect how she (the investigator) was supposed to believe him when he kept changing his story, the suspect explained: “well, if I had told you the truth in the first place, you would not have believed me.”

### **3.1.8 PREPARING FOR COURT**

While a confession by a rapist was the preferred way to cap a case, often a case would go to court with continued denials by the suspect. However, once a case was in the hands of the prosecutor’s office and being prepared for possible trial, there is far more convincing source of pressure for confession. From the rape investigator’s point of view, the

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<sup>56</sup> Maguire, M, Morgan, R. and Reiner, R (eds), *The Oxford Handbook on Criminology*



preparation for court was more a matter of preparing a case that was acceptable to the Division Prosecutors Office.

As was pointed above, the Director of Public Prosecutions does take generally strong cases in virtually every way a case can be. In order to obtain a conviction the Prosecutor either takes a case to trial or somehow get the accused to enter a plea of guilty. Since the great majority of convictions in a Prosecutor's office are on the basis of pleas of guilty, though not necessarily to the original full count of charges, there has to be some force other than the police getting these "confessions" to enter a plea of guilty. The studies of "plea negotiation" and "standard deal" in the court room have shown that the defence attorney is the most influential in convincing a client to plead guilty, and in this sense, it is the defence attorney who "wings a confession" from the accused person.<sup>57</sup>

From the rape investigator's point of view, the preparation for court was more a matter of preparing a case that was accepted by the Director of Public Prosecutions, for if the Prosecutor accepted a case, he would usually work out some kind of deal with the defence attorney, whereby the accused would plead guilty and the entire affair would be finished. During the observation period, there was little grumbling by the rape investigators that a rapist "got off" on a lesser charge or sentence because he had been involved in plea negotiation. For the detectives, it meant they did not have to spend a great deal of time running back and forth between their investigations and the court room, a conviction was assured, and there was less pressure on the victim, since she did not have to through a trial.

During the observation period, very few cases went to trial, and so the researcher had little data on the investigator's experience in a trial. However, what the researcher was able to learn mostly from discussions, was that the investigators worked very closely with the Division Prosecutions' office in coordinating a strategy for prosecution, and that the investigators were responsible of supporting the victim during the trial period. For the victim, this state was especially difficult, for it appeared to her that the whole world knew

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<sup>57</sup> Casper (1972) p. 54 – 65

of her humiliation by then, and she had gone over her story countless times. In the court room, defence attorneys attacked her and her story adding to her humiliation. Moreover, even new procedures disallowed defence attorneys from going into the victim's past, especially her sexual activities, defence attorneys would ask pointed questions in the court room implying promiscuity. In the case at hand the researcher observed, when the defence attorney took that line of questioning, the prosecutor would object, and the Magistrate would sustain the objection. However, the insinuation was sometimes enough to either upset the victim or imply to the Magistrate that the victim was not wholly innocent and therefore that the suspect was not wholly guilty. Since the detective had assured the victim that defence attorney would not go into her past, the victim was sometimes caught off guard and thus upset the victim who was perhaps misinformed about court room procedures by the detective.

As a final observation concerning the rape victim in court, a number of women defence attorneys were seen defending rape suspects. According to the police investigators, the idea of rape suspects having a woman defence attorney was catching on, demonstrating that everyone who was defended by a woman could not be a woman-hater or commit rape. Whether or not they any more effective than men in defending rapists is unknown, but it certainly provided an added opportunity for women in the legal field.

## **CONCLUSION**

Police work with rape victims is caught between two very different worlds, the ideal and the practical. On the ideal level, the police are supposed to be ever supporting and understanding of every rape victim they encounter. Also, they ideally catch every rapist and pursue him to conviction and imprisonment. However, the police cannot afford the immense amount of time required by every victim of rape for support and understanding. Nor can the police understand every conceivable situation of rape and how the victim allowed herself to be in such a situation, but even so they do not hold the victim responsible. Moreover, there is little the rape investigators can do with a case if the

Division Prosecution's office refuses to accept it. It is therefore important to note that the police are successful or unsuccessful in what they do because what they do cannot be examined in a vacuum or a laboratory, for it is in the field where they operate.

## CHAPTER FOUR

### CONSTRUCTION OF TRUTH AND LIES IN RAPE INVESTIGATIONS

#### 4.0 INTRODUCTION

This Chapter addresses the problem of how detectives go about establishing a case as genuine or false. The approach is essentially methodological in that it asks how the sense of order is possible when competing senses of that order are available. It is an elementary methodological inquiry in that whatever is decided in determining the truth or falsity of an event, account, or person involves some method for making sense of the phenomenon along with alternative sense.<sup>58</sup> At the same time, there are dramaturgic considerations in that it deals with false and possibly false presentations and double and triple crosses that are intentionally set up to enhance certain outcomes in face-to-face encounters. However, the prime interests here deal with the interpretive work in social interaction and not actors' schemes, and so the primary task would lie in uncovering interpretive practices, and the only schemes of interests would have been interpretive ones. Given this task, it was necessary to examine situations where people recognize more than a single "obvious" sense, for in these situations, the problematic character of the momentary reality requires the more visible types of interpretive work that can be observed and recorded.<sup>59</sup>

Since rape investigators deal with a problematic reality in that they must differentiate between "actual" and "false" rape cases and rape suspects who attempt to hide their guilt, their work was revealing as to the nature of interpretive work as detectives attempt to make sense of conflicting accounts, evidences, and assumptions.<sup>60</sup> In order to show the

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<sup>58</sup> Garfinkel, Harold (1967). *Studies in Ethnomethodology*. Englewood Cliffs NJ: Prentice – Hall pp 273 - 285

<sup>59</sup> Goffman (1969) at P.69

<sup>60</sup> Garfinkel, Harold (1967), *Studies in Ethnomethodology*

more general characteristics of what rape investigators were doing, we compared what they did with a very different person in a unique setting and circumstances and we were able to see that any reality was ultimately constructed and not a given objective fact.

#### **4.1 TRUTH AND FALSEHOOD IN THE INVESTIGATION OF RAPE**

What was “really true” and “really false” can lie as much in beliefs as conditions. For the purposes of this chapter, a self-believed account would be taken to be “true” and a self-disbelieved account to be “false”. Turning to rape investigations and how investigators go about distinguishing truth from falsehood, we first looked at the actors involved in rape cases and the kinds of lies that are possible.<sup>61</sup> We divided these down into victim and suspect lies and full and partial lies.

At the outset of any rape investigation, the detective first established the case to be either “real” or “phony”. Typically, the detective assumes that a reported rape was a real one but suspends total belief that all the facts are correct.<sup>62</sup> In certain instances, the investigator would suspect the victim’s honesty at the very beginning and see his or her job as being to get at the truth by interviewing the victim.

A detective’s suspicion was alerted by a number of things, either in the report of the rape or in the initial investigation before talking to the victim. The first suspicion – arousing element was the nature of the rape as reported by the victim. If the circumstances surrounding the case are typical in the experience of the investigator, he or she immediately becomes suspicious that the victim may be lying. For example, in one case, the victim claimed she had gone in the girl’s lavatory had given her something to smell in a bottle. When she smelled the contents of the bottle, she fell into a daze and was kidnapped by the girls. They took her to an apartment where she was kept over right and raped by a strange man. When she was released, she went home to her sister’s and told her what had happened, and the police were notified. When the investigator read the

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<sup>61</sup> Schwartz and Jacobs (1979) at p 218 -224

<sup>62</sup> Goffman (1969), p. 89

her story, saying that she was really hitch hiking and willingly went along with a group of men, agreeing to stop and drink beer with them in an isolated area where she was raped. This inconsistency was introduced by the suspect's defence attorney, based on the official police report, and the case was dismissed.

For the detectives, it was understood why the victim had lied. She believed it would make her look bad if she told the truth. However, even though the girl was trying to save face, the case was ruined and she attempted to convey to victim responsible that it was of utmost important for the victim to be truthful in all aspects of her account.<sup>69</sup>

The irony of partial fabrications was that the "whole truth" often came out after the victim came to trust the investigator fully. Since the investigators were sincere in their support of the victim, either because to do so was part of the practical necessity of maintaining the victim's cooperation or because of simple decency, the victims came to be very close and dependent on the detectives. However, by this time, there was already a written report of the victim's account of the rape which could be used by the rapist's defence attorney to discredit the victim. Thus, if the victim "remembered" what actually happened after she had established a trusting relationship with the detective, it was often too late, for the initial report was part of the official record showing that the victim had lied.

#### **4.2. SENSING THE TRUTH AND LIES.**

The believability of a victim's account could not hinge on the "objective facts" for there were no objective facts, only indexicals. Whatever was believed could be maintained by some formulation of events so that everything "fit" into the assumed order. Detectives were not as willing to give credence to a single interpretive scheme. They were more likely to suspend beliefs and "wait and see" before committing themselves to a firm understanding, then explain interpretive schemes that did not "pan out". They were

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<sup>69</sup> Lyman and Scott (1970) p. 145 where it was stated that the expectation for men to display coolness is greater than for women

the detective arrived to hurt the investigation. The background of the victim, aside from the fact that she had been raped before, took her actions to be “false” and duly reported their observations to the detectives.

It can be seen from the foregoing example that the sense of what really happened depended on the context and background expectancies making up the interpretive scheme. To the Patrol Officers, the victim was being uncooperative in not letting them “take charge,” so they took her actions to document her being “false,” while the detective who had worked with the same victim before saw the same actions as pointing to her being very cooperative in preserving evidence of the crime scene.<sup>66</sup> Thus, the reflexive formulations provided the characterizations and not just the victim’s behaviour.

The dilemma in making sense out of the victim’s account was in the reflexive character of formulations in terms of the victim’s performance. If a victim was upset, incoherent, crying, and scared out of her wits, this can warrant formulations of her being “false”. By the same token, if she was calm and controlled, she does not display the proper demeanor of a victim and therefore “doesn’t seem like a real victim”. For the rape investigators, the varieties of victim behaviour are seen to be “normal”, for they are always making rape investigations and assume, both by experience and the supportive understandings they develop in their work, that the performances by the rape victim, whether nearly hysterical or almost catatonically controlled, than her overall character.<sup>67</sup>

In addition to total victim fabrications, another kind of lie was common in rape investigations. These are cases where a rape actually occurred, but the victim lies about some part of the case.<sup>68</sup> For instance, in one case, the victim said she was walking along a street when a cab stopped, and some men jumped out and grabbed her, forcing her into the cab. Much later in the case, after the suspects had been arrested, the victim changed

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<sup>66</sup> Zambia Police Service Standing Orders (2009) edition section 127 which explains the submission of exhibits for pathological examination.

<sup>67</sup> Zambia Police Service Standing Orders (2009) edition section 127 which explains the submission of exhibits for pathological examination

<sup>68</sup> Schwartz and Jacobs (1979)p. 42 where they stated that the contexts provided made both formulations sensible, and both were warranted by the manner in which the victim reported the rape.

victim's account, he said it sounded false, for he knew of no substance that could be inhaled and immediately have the effect described by the girl. However, he said that in his experience he had seen so many strange things that the girl's story could be true.

In this particular case, the girl was "found" to be lying in that the detective was able to get her to "remember" that she had actually spent the night with her boyfriend and was afraid her sister would find out. The two interpretive schemes, i.e, the girl was telling the truth and the girl was lying, which the detective assumed before he interviewed he would both account for the "facts" in the case. The facts were never more than accounts or formulations of actual or invented circumstances, and so there was no ultimate reality testing of some objective world.<sup>63</sup>

Another element in a report that would arouse an investigator's suspicion was an informal account or note from patrol that was not put into the official report.<sup>64</sup> Sometimes the reporting officer would inform the detectives he thought the victim was a "flake" suggesting she was unreliable. The detectives took note of these informal communication but they did not put a great deal of confidence in them. For example, one case where patrol officers described the victim as a "flake" involved a woman who had been raped a second time by the same rapist, a rare occurrence. The girl was extremely upset and insisted on the Patrol Officers not touching anything. When the detectives went to interview the victim, she (the detective) found the girl to be still upset, but the "Crime Scene" was unmolested. The detective congratulated the victim on not touching anything and keeping the Patrol Officers from doing so. She explained to her after leaving the victims apartment that when the girl was raped the first time, she had picked up the glass the rapist had touched and washed it, thereby obliterating fingerprints. The detective had told the victim during the investigation of the first rape why it was important to maintain a crime scene so that no physical evidence would be destroyed.<sup>65</sup> Thus, when the victim was raped again, she was making sure nothing happened before

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<sup>63</sup> Schwartz and Jacobs (1979)

<sup>64</sup> Onada, (1974) pp 124 – 128 where he stated that if there was anything that did not fit in with them we interpreted it to mean what we wanted it to mean

<sup>65</sup> Zambia Police Standing Orders (2009) edition Section 146(2) (i)



likely to entertain two opposite interpretations and reserve commitment for much longer than others. For example, in one case, which never was resolved, the detective came up with two very different reasonable explanations after having talked with the victim and witnesses and going over the crime scene.

On the one hand, the detective explained that it was curious that none of the victim's neighbours heard the victim cry for help or saw the suspect.<sup>70</sup> She (the detective) said while it was not uncommon for victims' neighbours to "mind their own business," it was nevertheless something that gave rise to suspicions that the victim might not be telling the truth.<sup>71</sup> Furthermore, she explained that the victim had just broken up with her boyfriend and the victim might have reported the rape to regain his attention.

### 4.3 GETTING THE TRUTH

From what has been said so far, it would appear that detectives in this study were cynical and distrustful of victims. For the detectives, though it was a matter of being "realistic", and instead of falling into cynicism, they were simply prepared to expect lies and suspend belief one way or another. What came to be seen as "the truth" was "the-truth-for-practical-purpose," and if the detectives learned that a suspect who had been arrested and convicted was later found to be innocent because of a victim lying, it would not shatter any illusions about their version of "the truth." Therefore, getting to the truth was a matter of constructing a scenario from accounts and other evidences they could muster. As long as nothing invalidated the scenario, it was taken as "what really happened".<sup>72</sup>

The most likely source of Contrary accounts and interpretive schemes was the rape suspects. Typically, the investigators expected suspects to lie, and so if a suspect denied raping a victim, it was not taken to be a serious parry to what the victim said. However, even when a rape suspect was believed to be lying sometimes there was something in his

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<sup>70</sup> Goffman (1979 P.46 explains that even when women are pictured alone, they often display subordination, an expression of ingratiation, submissiveness and appeasement.

<sup>71</sup> Goffman (1969) PP. 113 -114

<sup>72</sup> Force instructions of the Zambia Police Service

account that for example, invalidate what a victim had said., in one case where the victim said she had just met the suspect in a bar, the rape suspect said he had known the victim for several months and had had sexual relations with her before. Legally and as far as the detective was concerned, it did not matter that the suspect had had sex by mutual consent at a previous time with the victim or that he had known her several months. If the rape had occurred in the manner described by the victim, it was still rape. However, the detective was extremely concerned about the claim of the suspect that he had known the victim for several months while the victim claimed she had just met him. After interviewing witnesses who saw the suspect and victim leave the bar together, the detective's suspicion increased as to the validity of the victim, the detective found she had not been telling the truth about her prior relationship with the suspect. Later, the victim revealed that she and the suspect had had sex together with her consent, but for some unknown reason the man had begun hitting her.

## **CONCLUSION**

Beginning with the problematic character of presentations and accounts when there was doubt as to the honesty of the presentations and accounts, we found that there was no sure way out of the doubt. As long as we assume that an account and its accompanying evidences can be doctored, there was nothing that was assumed that lies can be unmasked by removing the mask, but behind each mask can lie another, and one cannot tell when the mask or the skin was being pulled away. However, using assumptions, we saw that both the "truth" and "lies" are constructs accomplished through interpretive work where doubt and certainty are never absolute.

The purpose of this chapter had not been to show that rape victims habitually lie and that detectives are forever suspecting them of lying, for it was rare for a victim to concoct a total lie. Rather, for the rape detectives who live in a world of possible truths and lies, there was an ongoing and aware rendering of interpretive schemes reflexively formulating the documentary evidences of accounts, events, and "things" encountered in investigations. What was seen to be true or false could swing either way during the

course of an investigation. Those conclusions reached consisted of taking one interpretive scheme over another and then lining up the evidences in terms of the chosen scheme. Thus, it was possible for investigators to have “proof” of two contradictory accounts simultaneously, for the proof lay in the formulation of evidence in terms of the documentary method of interpretation. If it were the case that “the facts spoke for themselves,” there would be no possible resolution of a case, for the facts would cancel one another out.

## **CHAPTER FIVE**

### **CONCLUSION AND RECOMMENDATIONS**

#### **5.0. INTRODUCTION**

The chapter wraps up the research findings by spreading out the cardinal issues and subjecting them to a critique and the chapter is completed by recommendations for future improvements. The research paper had laid out the research as it was empirically obscured and understood.

#### **5.1. CONCLUSIONS**

This section of the research paper attempts to lay down the findings of the research in a manner as objective as possible. The findings in this research and conclusions as they follow were personally investigated and researched by the author. In most errands with rape investigators in the Victims Support Unit, the author discovered that the victims targeted for interviews were difficult to find and did not have enough time to share their experiences and disclose information. However, with the help of case records, court clerks and police officers who understood my research objectives were very helpful and made this research smooth and interesting. In setting out the conclusion and recommendations, the author wish to state all the sentiments presented in this research paper and the analysis of issues which was and still is according to the happening of particular situations at the time of the research.

##### **5.1.1. AN ANALYSIS OF THE LAW REGULATING THE OFFENCE OF RAPE**

In Zambia, the law regulating the offence of rape is section 132 of the penal code chapter 87 of the Laws of Zambia. In this research paper, it was discovered that the rapists are not big; Muscle men; rather, they are opportunistic little men who terrorise women. Whatever

their motivation or background, they give no thought to the incredible harm they do to their victims; they rob them of their selves. There has not been any advocacy for a change in the law or in the criminal justice process. This is not because law or the criminal justice system has no effect, but rather it is because the law and the justice system has little effect except after the fact. Any laws and procedures that protect the victim are praiseworthy and should be maintained and / or enacted. At the same time, the rights of the accused must be vigorously protected as well, lest rape become a witch hunt. Furthermore, the researcher does not advocate execution, castration, or any other medieval punishment, for our current system is cruel enough for the harm of punishment. The whole point is that the formal societal reaction does little good, either in reforming rapists or helping victims. It rarely has.

In this study, it was interesting to accompany the police on their investigations of rape. It was found that it was possible to learn a great deal about the nature of criminal acts, including rape which is the cornerstone of this research paper by the author being present during police – victim interviews. Furthermore, the experience of rape transcends the rape assault itself in that the societal reaction to rape, both that by the criminal justice system and society at large, is part of the rape experience. The researcher hoped to learn about the interactional elements of rape from the accounts of victims, and to some extent the rapists, and to observe the interactional elements of the societal reaction to rape, mainly in terms of the police – victim interaction. The position of observation also allowed the researcher to see rape from a larger context for the police were in interaction not only with the victim, but also with the rapist, witnesses, the hospital, and the court.

At the same time the researcher was able to observe and hear a good deal about the rape situation, the police department was also a resource of information in itself. The statistics of the police were of some interest, but the written reports of the police, both the general duties officers and follow-up reports of the detectives were the most valuable. This was because the reports included a narrative section detailing the victim's account of her assault. On the other hand, it was possible for the researcher to construct his own dimensions of interest and gather that information from the reports without having to rely

on the categories that were statistically catalogued by the police. On the other hand, the reports served as a resource for interviewing the detectives who investigated a particular case. Since the police do not put everything they know in an official report for legal considerations, there were elements in the rape that were not in the report. By discussing a case with an investigator after reading the report, it was possible to gather further details about an assault that were of sociological interest, it should be pointed out that the ‘omissions’ from nature, but rather that what was of interest sociologically was often irrelevant legally and investigatively.

### **5.1.2. THE SETTING**

The study took place at Lusaka Police Division Headquarters which caters for offences in the Lusaka Province of the Republic of Zambia. In this study it was found that the sample of rape cases was too small to make generalizations with any amount of confidence in external validity. Therefore, the city’s police department was in most ways similar to others in the country in organization and orientation, with exception that the police was one of the lowest paid civil servants in the country both in salary and benefits, and that the proportion of police to the population was also one of the highest as that of one police officer to two hundred people. This led to a low turnover rate in the department relative to other police organizations in the region and a thinner spreading of personnel. The training of officers, however, was up to the Zambia Police Standards.

The Victim Support Unit was described in chapter 3, and it was unique in relation to the rest of the departments in the Zambia Police Service. On the whole, the department’s morale was low, due to the division’s frugality and low expectation of officers for career advancement in the department. However, since the Victim Support Unit was considered to be one of the elite details in the department, morale was considerably higher and there was far more job satisfaction. However, given the relatively low appropriation of police personnel by the Division, the detectives assigned to investigate rape cases were especially busy. For the purpose of the research, this aspect had both positive and negative aspects. It was useful in that by accompanying any single investigator, the

researcher was assured of being able to gather data on a case at any time, rather than, having continually to bounce from one investigator to another depending on who happened to be busy. All of the investigators were busy with cases most of the time. The negative aspect was that they did not have a great deal of time to spend answering all of the questions the researcher had about cases.

The major problem lay with the rape victim. If the research had been conducted solely on the basis of interviews with rape victims, there would have been little problem of informed consent, for there was nothing in the nature of research to hide from the victim. It would have been possible to hand the victim an informed consent form in the context of a research situation. However, the purpose of the researcher in part was to observe investigator – victim interaction in the context of a criminal investigation. There was a great deal of finely delicate interaction between the victims and detectives, and it was necessary for the investigator to build a bridge between himself or herself and the victim.

In this study, there was a need to get as close as possible to the activity of inquiry, namely rape, in order to find out what actually happened during rape. This was because of the interest in the interactional elements in rape situations, which were largely unavailable in police – survey generated statistics. It was not possible to observe rape, obviously, and the researcher was not certain it would be possible for him readily to find a cohort of rape victims to interview.<sup>73</sup> Holmstrom and burgees were able to contact victims and interview them about their experiences through a victim counseling programme they worked with in a Metropolitan Hospital. In their dual roles as counselors and researchers, Holmstrom and Burgess were able to interview the victim very shortly after the rape occurred.<sup>74</sup>

### **5.1.3. GAINING ACCESS**

One problem with all participant observation studies was in gaining access to the research setting. To the extent a setting was open and public, all the researcher had to do was to

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<sup>73</sup> Corolyn Hursch (1977) pp. 9 – 12 conducted her research by placing public announcements in the media to contact rape victims for research and was able to interview a large number in this manner.

<sup>74</sup> Brownmiller, Susan,. Against our Will (5) Men, women and Rape

walk in and start making observations. In contrast to such open settings, entrance into a police organization entails special entrance requirements and problems. Additionally, since the Victim Support Unit was considered both an elite detail and handled sensitive cases, more than the normal number of problems arose. The process of gaining entrance by contacting the department's research unit in the hopes that the researchers working for the police department would be the most understanding regarding the whole issue of doing sociological research and at the same time finding out something about the organization. Those in the department's research unit were extremely helpful and supportive, but since they were a separate and largely civilian – staffed group, there was little they could do except to acquaint the researcher with whom to contact.

The fact that the researcher was eventually allowed total access was not due to any cleverness on the part of the researcher, but rather to the decency of the investigators. Other than being a good listener and being genuinely interested in what the investigators were doing, there was no special research technique or trick. It was helpful to gain access to any situation to reserve judgement until there was sufficient data to make judgements, and it was certainly useful for the researcher to realize that they were ignorant of all of the social and organizational elements behind the actions they initially observed. After observing a number of detective – victim interviews, the researcher was amazed at the consummate skills of the investigators not only in supportive interaction but in obtaining information. Moreover, they did so with such ease that it was clearly an accomplished skill and not awkward show for the researchers' benefit. It was a skill not everyone has, and they were able to do something the research could not do without a great deal of experience, practice, and compassion. Therefore, the researcher was very much an aired student of interaction as he watched experts do their work. As such, there was a lower probability that the researcher would say something to put his foot in his mouth and alienate the investigators.



## 5.2. RECOMMENDATIONS

Having highlighted the role effectiveness and problems facing the Zambia Police Service, in the investigation of the crime of rape, it is the wish of the author of this research paper to recommend some solutions to the vice. The approach to preventing rape does not concern new types of physical arrangements. In a word, rape prevention is seen as making rape a very risky business for the rapist and making the rapist to appear the foolish man he really is. To make rape risky crime, the target of rape must be taken seriously and be seen to be at least as dangerous as a man. In order for the rapist to appear foolish, the researcher must conceptualise what in fact a rapist is. This must be done, not just in terms of a new label, but rather in terms of what the rapist is as can be shown by his actions in the context of society.

The first aspect of rape prevention has to do with fighting. It is not a new recommendation to suggest that women should fight and fight like hell if assaulted by a rapist. Women's self-defence groups have advocated this approach for some time and have done much to change the attitude of women. The only reservation about anyone to fight off a rapist or any other assailant for that matter is that it is easier said than done. Women who do not attempt to fight a rapist can never be held blameworthy, for anything done in rape is the fault of the rapist, never the victim. However, the researcher does not, as some have caution against fighting for fear of violence beyond the rape itself. The belief that if one is compliant and passive, the harm will be minimal omits two things. First, rape itself is violent harm and anyone who has seen the anguish of a victim who was raped but not brutalized further can certainly see the violent harm done to victims. Second, passive compliance is no guarantee that the rapist will not heap further violence on a victim anyway. Furthermore, both struggling and screaming consist of a passive, defensive form of resistance. In effect, such actions communicate helplessness rather than determination to stop a rapist. In looking at those who fought, we see that the majority of victims were harmed in some way, but it must be remembered from chapter 3 that the majority of the victims who fought (hit, bit, kicked) were not raped. In fact,

every type of resistance, even struggling and screaming had the effect of lessening the chances of a rape being completed.

The ultimate scare held up to rape victims who fight is death. Since none of the data gathered for this study was based on rape victims who were killed after being raped, the researcher has no idea whether the victims who were killed died because of resistance or not. There is very little way of knowing either, for even if there are signs of resistance by dead victims for example evidence of blood or skin under victim's fingernails, it is unknown whether the victim began resisting before she realized that the rapist was going to kill her or after. It is clear, though, that rapists are more likely to run off if the victim fights than if she does not, and if the rapist is fought off, he is not going to kill the victim.

It is dangerous to overdraw comparisons between the animal world and the world of humans, but in the case of rape assaults it may be useful. We know that predatory animals such as lions and jackals go after the weak, the old, the young, and the sick. Not only is it easier for the predator to make a kill and feed itself (or more accurately herself in the case of a lioness since the lioness does the hunting), but the predator lessens the risk of being harmed itself. A health adult Zebra, for example, could kick in the ribs of a hungry lion, whereas a young or infirm zebra could not. This same logic applies to rape, in that the rapist is far safer going after a woman if he knows all he has to do is to threaten her and she will do nothing to harm him. It has been popular to point out that rapist are slightly imbalanced because of the number of old women who are raped, but if we consider the relative helplessness of the elderly, it is consistent with rapists attacking the weak instead of the strong. Rather than being surprised at the frequency of attacks on the elderly, which really is not very high, we should be surprised that it is so low. As for any predator, the weak are the favourite victims.

As a final note before going into the conceptualization of rape and rapists, there is a concern by criminal justice incumbents regarding advice to victims and statements as to what victims should do based on empirical evidence. On the one hand, the police voiced a concern over advising a vigorous resistance to rape, since they believed they might

possibly be liable to civil suit and because they sincerely believed that a victim might invite additional abuse if she did resist. Their usual advice pretty much left up to the victim what she should do if assaulted by a rapist. Also, they had clear advice about what to do after being raped, namely, calling the police. On the other hand, there was concern that victims should fight back. Their biggest concern was that a defence attorney would call an “expert witness” in who could empirically demonstrate that women who fought back could successfully resist rape. These concerns are very real ones in the context of the work of the criminal justice system, but the criminal justice system, especially in courts, has done little to ameliorate rape. The police have offered a great deal of assistance to victims in the form of support, and they have arrested a lot of rapists. Likewise, concerned prosecutors, at the request of women’s groups, have made the court proceedings more bearable for victims, especially in influencing the change in laws regulating what defence attorneys can bring up regarding the victim’s past. However, these efforts by the criminal justice system have dealt with the victim of rape, not the women who were not raped because they prevented it by their own actions.

Since, on the basis of data, there is evidence that victims resistance does reduce rape on the whole, it would follow that further resistance would further reduce successful rape assaults. In addition, since certain types of resistance, active fighting resistance rather passive struggles or screams, appear to be more successful without evidence of severe harm beyond the rape or attempted rape itself, such specific types of fighting are most useful in fending off rapists. There is no guarantee that fighting always works in chasing off a rapist, but it is clear that it works better than doing nothing or passive resistance. Other studies have also found that rape resisters have been successful in fending off rapists.<sup>75</sup> Moreover, as Hursch notes, there are probably a lot more would-be victims who fought off rapists then show up in the police records, for such victims would be less likely to report the assault because they were not harmed.

In suggesting that victims fight off rapists based on patterns of rape resistance, there is not any kind of moral implication that a woman who is raped has done something wrong

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<sup>75</sup> Caroly Hursch (1977)

if she has not fought off a rapist. Such concerns, which bother prosecutors, are based on the convoluted logic of rape trials and moral entrepreneurship that bounds in the criminal justice system.<sup>76</sup> Rape victims who do not fight are merely scared out of their wits, their only moral decisions being to stay alive.

Given the scare put into women's minds by society-at-large and the criminal justice system in particular, it is certainly a rational decision not to fight, but there is no way such a decision can be construed to be a moral one or seen to compromise the victims morality.

Finally, it is important to realize that there is little the criminal justice system can do to prevent rape. The laws, procedures for courtroom behaviour, and everything else done by the criminal justice system is based on deterrence, the hope being that a would-be rapist sees the power and justice of society and is fearful of raping a woman. Obviously, this has not happened and it is just as likely that rapists have seen the importance of the system and have little fear of retribution. And, as was pointed out above, the criminal justice system gets into the act only after a victim has already been raped.

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<sup>76</sup> Becker (1963) pp.147-163

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