

Collapsing Cases

<https://www.thetimes.co.uk/article/collapsing-cases-x8q2ib8sq>

Prosecuting rape is a legal minefield. Police should be alert to false claims of assault

Many will look askance at the call by Baroness Wolf of Dulwich for those who maliciously accuse others of sexual assault to be prosecuted for perverting the course of justice. Rape has been a silent, under-reported crime for too long and anything that saps the confidence of victims in coming forward has to be subjected to critical scrutiny.

Yet the point made by Lady Wolf in *The Times* today is an important one. Faith in the fairness of British justice is being scratched away by the collapse of high-profile rape prosecutions. "It is better," says the crossbench peer and educationalist, "that people who are guilty walk free than innocent people are imprisoned and have their whole lives ruined."

That is the very essence of a law-based society, however uncomfortable it sounds. Last December this newspaper disclosed that Liam Allan, a 22-year-old student, spent almost two years on bail and was put on trial on twelve counts of sexual violence because the police had failed to hand over text messages from the alleged victim that would have exonerated him, and eventually did. In messages to friends the young woman discussed her fantasies of being raped and in a reference to one encounter said: "It wasn't against my will." This was plainly important evidence. Other cases have included the clearing of an alleged child rapist after the prosecution was unable to offer evidence. A 19-year-old student at Oxford University, accused of raping a teenager, spent two years on bail until he too was cleared in a belated examination of social media postings and diary entries.

Lady Wolf suggests that false testimony when given for ulterior motives is perjury pure and simple. False rape allegations do sometimes lead to prosecution, but only rarely. If invoking the perjury law prevents victims from going to police, says the baroness, then that "must be considered the price of living in a free and open democracy".

The argument, however, is one-sided. As well as false memories or vindictive accusations, the problem is linked to faulty institutional safeguards that are supposed to shield the innocent and gather all available evidence. The shortcomings of the Crown Prosecution Service and police have handi-capped the justice system in this sensitive area.

The sheer mass of digital evidence accumulated in a modern-day friendship or relationship appears to discourage investigators from thorough searches. Defence lawyers accuse the prosecution of cherry-picking text messages. Police officers are often given the most cursory training on how to download data from smartphones and tablets. To cut costs in a time-consuming trawl of messages that could establish the motive and circumstances of an attack, the digital material is sometimes outsourced to private laboratories. Some of these companies are not subject to regulatory oversight.

The result: late or incomplete disclosure of evidence to the defence team that leads to the crumpling of assault cases. The number of reported rapes in England and Wales doubled in the four years leading up to 2016, but the conviction rate remains low. In its rush to improve these conviction rates, an overloaded judicial system is sometimes failing in its duty to distinguish between legitimate and baseless allegations. Rape is a grave, repulsive crime. Allegations always have to be taken seriously,

and that means, among other things, testing them carefully. Anything less is a disservice to rape victims.

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PB Joyce Mar 30, 2018

Why is rape "a grave, repulsive crime"? It was once, when it had a narrower definition. So many sexual encounters are now called rape that the "victim" often isn't even aware until a more enlightened friend informs the "victim" that her life has been ruined. Numbers of false allegations are indeed hard to determine, but readers may be interested in my article on the subject here: <https://accused.me.uk/2018/03/false-rape-allegations-figuring-figures/>

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1RecommendReply

Rachel Mortimer Mar 30, 2018

Excellent article that needs sharing with as many people as possible.

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Mike Wicksteed Feb 13, 2018

"... an overloaded judicial system"? The problems relating to this issue are in the pre-trial stage. Surely the leader writer meant "an overloaded criminal justice system".

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Allison Laird Feb 13, 2018

"Many will look askance at the call by Baroness Wolf of Dulwich for those who maliciously accuse others of sexual assault to be prosecuted for perverting the course of justice." Oh yes? I don't doubt it, given the firestorm of moral outrage against men whipped up by MeToo ers and militant feminists determined on punishing men in general.

Rape is an ugly crime, indisputably. But seeking to rectify what many regard as women being 'victims' of male sexual assault crimes, when the very concept has been perverted by feminists into a continuum, from unwanted clumsy flirtation to rape, by increasing the rate of conviction by whatever means is not justice, not for the accuser and certainly not for the accused.

There a few things more horrible, more life-destroying than being on the receiving end of false allegations. And for a man, the most monstrous is the false sexual allegation. It is not just perjury. It is character assassination. It is the worst imaginable calumny. Don't tell someone who has suffered this that you can pick up and go on. Because you can't. You're life, in terms of your job, career, family, and friends is ruined. The key is the word 'assassination'.

Should someone be prosecuted, jailed, named and shamed for destroying someone's life by malicious lies? You bet your life they should.

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9RecommendReply

Rachel Mortimer Feb 13, 2018

Alison, you are a brave lady to speak such truth. You are absolutely right when you refer to assassination of your life and that of your family.

Do you think these so called reviews and Baroness Wolf's suggestion will change anything? I fear it all comes too late for many...

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Allison Laird Feb 13, 2018

@RM Thank you for your kind words. They are greatly appreciated.

I am hopeful that the conduct of investigations will improve but I am not overly sanguine. The guiding principle for police presently governing rape allegations is that you 'must believe the victim' must go, as it automatically prejudices against the accused. Regardless of the crime, it is the business of the police to investigate dispassionately based on evidence and to investigate thoroughly. The Editor's apologies for police shortcomings in today's piece are disgraceful. That kind of apologist would never be publicly accepted if it were a murder. No wonder Alison Saunders sleeps soundly with John Witterow at The Times.

I also believe that a concerted effort must be made to focus on the evil of false rape allegations at the source - the women who make them. It will not come from The Times. The Editor, much concerned with moral turpitude of Cabinet ministers and charities, is deep down superficial. Ministers behaving badly sells. Wrecked lives of white middle class men not so much. It used to be called moral cowardice and hypocrisy.

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Matt Griffiths Feb 13, 2018

@Allison Laird "There a few things more horrible, more life-destroying than being on the receiving end of false allegations. And for a man, the most monstrous is the false sexual allegation." Quite so. But if false allegations of rape are bad enough, false allegations of sexual abuse against under 16s are even more likely to lead to complete character assassination and, though less common, that can apply to women as well as men.

The idea that the more serious the crime the more zealous the prosecution applies here too but if the alleged offences are historical, it's much less likely for crucial evidence from mobile phones etc. to disprove it. For 'one person's word against another' cases, the bar needs to be set very high for prosecution, but the further you go back in time, the higher it should be set.

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BigJim Feb 13, 2018

A key feature in is the processing of rape allegations by the Police and CPS is that a principle established in the late 17th century isn't being pursued;

Besides, reason tells us, that the more horrid the Crime is, the more Cautious we ought to be in making any guilty of it.

An inverse logic is being applied now; the more horrid the alleged crime, then it seems the Police, the CPS and the DPP Alison Saunders have determined that less care-and-attention should be paid to it.

That quote came from a discussion about another crime which in the 17th century was also one deemed by many to be so foul that it be treated outside the normal rules of evidence and process.

The crime of course was that of witchcraft, the quote being taken from Samuel Willard's essay '*Some Miscellany OBSERVATIONS On our present Debates respecting Witchcrafts, in a Dialogue*'

Willard's essay became an integral part in the change to how evidence and cases were presented to Courts in the late 17th century onwards in both The Americas and in England and Wales. Our criminal justice system used to be underpinned by the experience gained from the witch trials.

It appears many of those lessons are being unlearned. A disturbing indicator about how things have changed is the re-adoption of spectral evidence as being a valid form of evidence in trials. Spectral evidence, that is, testimony of dreams and visions is outlawed in trial evidence in the US, but there isn't actually anything similar preventing its usage for England and Wales. Under the guise of 'recovered memory therapy', victims are encouraged to recall alleged events through the form of

dreams, 'flashbacks' (visions) and recall of supposed forgotten memories. The DPP re-enabled spectral evidence usage in the trial of Coronation Street actor Michael Le Vell. The case also depended on belief in 'magical healing' and resulted in an acquittal. The recent scandal of the case against Dr Stephen Glascoe and others was the result of a dependence on spectral evidence (recovered memory therapy).

The re-adoption of spectral evidence by the CPS though hasn't been successful. Crown Courts juries in England and Wales haven't been yet persuaded to convict when it is employed. Nor, as indicated by the failed Mark Pearson trial, will juries convict when an allegation of witchcraft is being made, even in a subtle form. In that case the jury were being asked to believe that the defendant had committed an offense (rape by digital penetration) which defied the laws of physics.

Treating one particular crime as being one subject to special attention isn't new - that's precisely how witchcraft was dealt-with in the 16th and 17th centuries. The risk that our criminal justice system would fall prey to the same issues with innocent people isn't a risk - we've already fallen down that hole.

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Colin Morris Feb 13, 2018

The headline should have been: "Don't cry Rape! says Baroness Wolf."

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John Cameron Feb 13, 2018

The fact that yet another "rape" trial has ended in farce has shed light on what has long been a conundrum. British prosecutors have always claimed that less the 10 per cent of rape allegations are false whereas New York prosecutors put the figure at well over 20 per cent. If the incompetence of our police and prosecution service is fed into the equation it starts to make sense.

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M76 Feb 13, 2018

I cannot see why many should look askance at prosecuting those who make false and malicious allegations of rape. Given the effect on and consequences for their victims it is very appropriate. A hefty sentence for perverting the course of justice should follow conviction as a hefty sentence would doubtless have been received by the victim if the false accusation had resulted in a conviction. The current practice is one sided and unjust but hardly surprising in the current McCarthy-like climate.

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Families Need Fathers Feb 13, 2018

Very sensible proposals. They need to apply not just to rape, but all serious 'he-said, she said' allegations which are commonplace following break-up of relationships.

Some are true and some are not. However, when false they have devastating effects on the accused, most especially when children are involved and personal anger and envy can trump the best interests of children. False allegations made in these situations lead to child-parent relationships being disrupted or completely severed.

Both criminal and family courts must take firmer action in such situations, not least to discourage people from thinking that they can get away with it. It does tremendous harm to their children, but in the heat of dispute too many people become blind to this.

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Robert Holmes Feb 13, 2018

Let's do what some countries on the continent i.e do NOT name any alleged offender ,whatever the crime, until a conviction has been obtained.

Yes and malicious accusations should addressed and the accuser have the same anonymity until found guilty

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Craig King Feb 13, 2018

It seems likely that the increase in reported claims of rape is due to the changed definition of rape in societies eyes. That coupled with the accusations being made years and decades after the event will also result in poor conviction rates but nevertheless men's lives will be ruined which may be the desired outcome anyway.

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Richard Stout Feb 13, 2018

"Prosecuting rape is a legal minefield. Police should be alert to false claims of assault"

The police already were alert to false claims of assault before they were perversely instructed to "believe the victim", which would logically make every accused man guilty regardless of the evidence, to undermine the most basic principle of jurisprudence.

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G W F Hegel Feb 13, 2018

@Richard Stout Absolutely. And see my comment under the article reporting Baroness Wolf's remarks,

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Zenocrate Feb 13, 2018

The slipperiness of memory is indeed a key point but one that has been strangely absent from discussions about the mire of rape-accusations and belated acquittals. The plasticity of the brain means that it is unsettlingly easy to fabricate a past for oneself and studies have shown that the more vivid, the more detailed, a recollection is, the more likely it is to be not remembered but imagined.

Epileptic fits have scooped out large swathes of my memories and I am painfully aware of much of what I 'remember' never actually happened; human nature abhors a vacuum and I have unwittingly tried to fill the black holes with reconstructions drawn from stories told by others, photographs etc. Perhaps I tend to be too inclined to doubt all claims to 'credible and true' accounts of the past as a result.

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Rachel Mortimer Feb 13, 2018

What a truly honest comment.

I believe that false accusers in many historic cases, and indeed more current cases, genuinely believe what has happened. Nobody is brave enough to ask whether their accusations are real, for all accusations must be believed. With help from counselling and caring friends and family, all who mean well, these accusations can morph into reality.

However these people need handling very carefully as they are fragile. They believe these events occurred and as such suffer the pain of them.

I am fully aware of the effects of false allegations and my life has been destroyed by them. Even so, care is needed in going forward.

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