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Experience of guilt in court hearings—Comparing rape, assault and fraud cases

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Abstract

Feelings of guilt often occur when people are subjected to crime. In this study, guilt is defined as a moral and emotional category, as opposed to the legal guilt. The aim of this study was to investigate how crime victims related to feelings of guilt in the court process. Interviews with plaintiffs in rape cases (10) have been compared to interviews with plaintiffs in assault (10) and fraud cases (10) in order find out if there are differences in the perceptions of guilt for each type of crime. The interviews are analysed by discursive psychology and three interpretative repertoires have been identified: self-blaming, guilt imposed and guilt resistance. The results show that plaintiffs in rape cases expressed more feelings of being guilt-imposed compared to plaintiffs in fraud and assault cases. Some plaintiffs in the rape cases describe how they actively opposed what they perceived was guilty-imposed practices in court.

KEYWORDS

court, discursive psychology, guilt, plaintiff, victim, rape, assault, fraud

INTRODUCTION

Feelings of guilt and shame often occur when people are subjected to crime. In public debate, practitioners, victims and scholars have argued that communicative practices in courts are a major cause of such feelings in people subjected to crime (cf. Capezza & Arriaga, 2008). The relationship between perceptions and attributions of guilt is a complex matter. Moralising and legally irrelevant questions about a rape victim's sexual habits do not necessarily lead to emotions of guilt on part of that person. Conversely, relevant questions that for a neutral bystander would appear non-accusatory might very well cause a victim to have feelings of guilt. Another complicating factor is that perceptions of guilt can have a range of origins outside of the court setting, for examples in the interaction with social workers and the police, as well as reactions from family, friends, colleagues and other social environments (Lindgren et al., 2005). In some cases, reports in the mass and social media may also be contributing factors (Bernhardsson & Bogren, 2012).

Perceived guilt can be understood as a normal and quite common psychological reaction to a crisis (Frieze et al., 1987), or simply as a reasonable and unproblematic reaction following a behaviour that involves risk. A person's understanding of guilt is mediated through a

Abbreviation: BJW, Belief in a Just World.

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cultural context. Feelings that arise during a court hearing must therefore be interpreted in a broader context of moral values and meanings originating from wider social settings and historical tradition (Lövkrona & Nilsson, 2015). The perception of guilt can vary depending of what type of crime a person is subjected to. A woman who has been raped might be faced with questions about why she accepted to sleep in someone else's bed. A man who has been assaulted after a football game may face questions about why he wore the jersey of his favourite team when visiting a pub favoured by fans of the opposing team. In both cases it could be said that the victim has engaged in some sort of risk-taking behaviour. However, it is an open question whether imposing of guilt can be perceived in the same way in these seemingly similar cases.

Research on emotions in courts includes different disciplines, such as criminology, law, philosophy and sociology (Maroney, 2016). For social work it is of importance to understand how victims perceive themselves in order to provide support and help. Sweden has, for instance an obligation to follow EU directives concerning minimum standards for the rights, support and protection of victims of crime (European Parliament and Council, 2012) and the Swedish Social Service Act (2001:453) that state that victims of crime should receive the help and support they need, including emotional support (Thunberg, 2020) from social work professionals. There is also a strong tradition of voluntary social work, Victim Support Sweden (Brottsofferjouren Sverige) functions as a complement to the public sector when it comes to providing support to victims of crime (Jägervi, 2016; Svensson, 2006). In order to know how to support victims it can be important to know how they experience the crime and its consequences. Research has shown that crime victims often have feelings such as guilt, shame, powerless and isolation. One reason for this can be that they have been treated unfairly in the legal processes (Campbell, 2005; Madigan & Gamble, 1991). Feelings of guilt and shame can contribute to victims not seeking help for problems related to the crime (Ljungwald & Svensson, 2007; McMahon & Schwartz, 2011; Plante et al., 2022; Sable et al., 2006). Although, the aftermath of the crime can lead to that they seek help for issues related to social work (McMahon & Schwartz, 2011). Research has shown that when victims seek help, they often feel blamed again (cf. Campbell et al., 2001), something called 'secondary victimisation' (Ullman, 1996). Studies of victims' experiences of attribution of guilt in court processes can provide important insights for social workers on how to support and help clients that have been victimised.

Aim

The aim of this study has been to investigate if and, in that case how, plaintiffs (crime victims) perceive feelings of guilt in relation to the crime event and the court process.

Interviews with plaintiffs in rape cases have been compared to interviews with plaintiffs in assault and fraud cases in order to find out if there were differences in their perceptions of guilt. The three crime cases represent different contexts of moral values, different relationships between perpetrators and victims, different cultural perceptions of the gendered nature of each crime, and also different forms of violence and psychological harm.

Rape compared to other criminal cases

Rape is the crime around which most of the scholarly debate regarding victim-blaming has revolved. The vast majority of victims of rape are (young) females (The Swedish Crime Survey, 2021 [NTU]). Rape can involve violence, but it can also be committed by using threats or taking advantage of someone being in a vulnerable position. There is extensive international research which show that women have been discriminated in different ways in rape cases (cf. Andersson & Edgren, 2018; Coates & Wade, 2004; Kelly et al., 2006; Smith & Skinner, 2017) and that the court process can be stressful for the victims (Ellison & Munro, 2009).

Sweden is ranked globally as one of the highest in terms of gender-equality and is known for a strong focus on women's rights (Schwab et al., 2017). When it comes to violence against women it can be noted, however, that the Istanbul Convention, which was ratified 2014, is neither incorporated nor self-executing in Swedish law. Although it is considered as a general principle that the Swedish legislation should be interpreted in conformity with international obligations, it means that when there is a conflict between the Convention and national law, national law should prevail. However, in Sweden, the European Convention on Human Rights, which is also of central importance in rape cases, was ratified already in 1952 and in 1995 also incorporated into Swedish law. The view of the plaintiff's role in rape cases has because of this changed in order to strengthen the plaintiff's position. During the 2000s there were three major changes. In 2005, the concept of 'helpless state of mind' was introduced into law which allows for a conviction of rape if the plaintiff, due to a diminished capacity, for example, sleep, mental disorder or intoxication, was not able to express their will (SFS, 2005:90). In 2013, the Rape Act was amended again and the term 'helpless state of mind' was replaced by the term 'particularly vulnerable

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situation'. This change means that it became possible to convict for rape even in situations when the plaintiff responded to the abuse with passivity, so-called 'frozen fright' (SFS, 2013:365). In 2018, Sweden passed a law based on consent, which requires explicit consent by all parties and subsequently all sexual acts to be voluntary (SFS, 2018:618). Consent legislation is expected to contribute to a change in clarifying that someone's body is not available for sex unless all participating persons have expressed consent and agreement. The intension for the legislation is to contribute to changing of values and attitudes towards sexual relations. Although, the consent law has been criticised from a feminist legal standpoint for being made in the 'male rationale' (Bladini & Andersson, 2020) and does not fully protect the sexual integrity of victims since there are structural inequalities between women and men. It can be unclear if the consent is voluntary or involuntary (Ehrlich, 2016) since there can be different forms of power imbalances and coercion. Power relations can be subtle, it is for instance possible that a person does not dare to say no or believes that it is not okay to interrupt the sexual act.

Assault, like rape, is perceived as a serious violent crime. Per definition it always involves physical violence. According to the law (Penal Code, 1962:700), the court must determine if the defendant has exposed the victim to bodily injury, illness, pain or powerlessness (vanmakt). The court is required to consider, however, the plaintiff's guilt if the assault was in self-defence (nödvärn), that is, if the defendants felt forced to defend themselves with the use of violence. 'Nödvärnsrätten' (Penal Code, 1962:700, chap. 24, § 1) gives the person subjected to a criminal attack the right to use a certain amount of physical force in self-defence. In contrast to rape cases there are more often witnesses in assault cases.

Fraud is a crime where someone, a perpetrator, has misled another, the victim, either by falsehoods or omission, into an act which results in a gain to the perpetrator and damage to the victim (Penal Code, 1962:700). Fraud is different from rape and assault in that it does not involve physical violence, moreover concerns social agreements that have been broken and depending on the damage. In determining the defendant's guilt, the courts need to consider if the plaintiff really has been deceived or if they just regret what they have done. It is common that there is some sort of relation between the plaintiff and defendant and most victims are male (The Swedish Crime Survey, 2021 [NTU]).

Victim blaming

Being subjected to crime can contribute to traumatic experiences for the victim (Moor & Farchi, 2011), such as health problems, for instance depression (see Campbell et al., 2009 for an overview). Another problem is that traumatic emotions can lead to that the victim avoids reporting the crime (Kelly et al., 2005). Something that can affect the traumatisation and victimisation is the idea of a 'just world' (Lerner, 2003) and that victims are responsible for the crime to which they were subjected to (cf. Vonderhaar & Carmody, 2015). Belief in a Just World (BJW) has been used as an explanation for victim-blaming, if something bad happens to a person he or she must have done something wrong (Lerner, 2003). These ideas not only affect attributions of guilt, it also affects victims' perceptions of their own guilt.

Studies have shown that people exposed to sexual abuse are blamed to a greater extent than other victims of crime (Bieneck & Krahé, 2011; Gravelin et al., 2019). Feminists has argued that sexual assault is a way for patriarchal structures to maintain power relations (Kelly, 2013). In each society and culture there are social narratives in relation to women and sex. People who believe in a just world also accept ideas about rape myths (Hayes et al., 2013). The concept 'rape myths' has been used both by sociologist (Schwendinger & Schwendinger, 1974) and feminists (Brownmiller, 1975). According to this myth the blame for that rape is put on the woman, for example that she 'asked for it', she behaved as a slut under the influence of alcohol, she was dressed in a certain way and that she regretted having sex with the person (cf. Lonsway & Fitzgerald, 1994). The feeling of being blamed by others is also something that is internalised in the consciousness of the victim and something that can affect their ability to seek help from social services and to report the crime to the police. Studies have also shown that rape myths influence the legal proceedings (for a review see Hudspith et al., 2021). Knowledge of how crime victims experience the crime and how they later are treated in court hearings can be important for social work since 'the aftermath of the rape may result in symptoms that bring a survivor to see a social worker' (McMahon & Schwartz, 2011, p. 251).

Many studies show that women feel blamed by others when it comes to rape. But it is important to understand the victimisation in a broader context and comparative studies are required. Comparative studies can also provide an insight into whether and in that case how victims in other types of crimes feel that they are being blamed. In assault cases victims can for instance be blamed for their drinking behaviour and in fraud cases victims can be blamed for being gullible. Reece (2013) suggested that rape victims situations are not unique and that there are myths about rape myths. One of the few comparing studies was made by Brereton (1997) who compared rape cases with assault cases in Australia. He found that the

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differences between these two target types of crime were strikingly small when it came to attribution of guilt in court hearings. Although, the finding showed that plaintiffs in rape cases were asked twice as many cross-examination questions than in assault cases.

Perceptions of guilt

A key function of court hearings is to attribute legal guilt. Although, in this study guilt is defined as a moral and emotional category, as opposed to the legal guilt that is at focus for the courts. Guilt can be defined as, 'an unpleasant feeling with an accompanying belief (or beliefs) that one should have thought, felt, or acted differently' (Kubany et al., 1996, p. 429). Feelings of guilt are generally accompanied by feelings of responsibility and remorse (Kubany & Watson, 2003). Tangney (1996) distinguishes guilt from shame: defining shame as a phenomenon directed towards the self, whereas guilt is directed towards specific acts. Scheff (2003) has defined guilt as an emotion in the family of shame:

> I define Shame as the large family of emotions that includes many cognates and variants, most notably embarrassment, guilt, humiliation, and related feelings such as shyness that originate in *threats to the social bond*. This definition integrates self (emotional reactions) and society (the social bond). (p. 255)

It can be hard to separate feelings of guilt and shame since they are intertwined and this study primarily discusses guilt as an emotion and that shame is imbedded in this feeling. Guilt and blaming oneself is by no means restricted to crime victims. It is also common among victims with health issues such as chest pain (Richards et al., 2003) and lung cancer (Chapple et al., 2004). Feelings of guilt can arise when a person feels that they have done something wrong in relation to societal norms (Leith & Baumeister, 1998). Janoff-Bulman (1979) has proposed a distinction between 'behavioural' and 'characterological' self-blame. Behavioural self-blame is defined as guilt that is directed at specific behaviours, for example attributing responsibility for the assault, which could bring up feelings of guilt (and shame). Characterological self-blame is about the individual's character, for example being too trusting or impulsive, which can create feelings of guilt (and shame). Behavioural self-blame has been found to be a more common response than characterological self-blame (Katz & Burt, 1988; Meyer & Taylor, 1986). Research has shown that victims of sexual crimes appear to feel more guilt and shame than other victims (cf. Pitts & Schwartz, 1997; Vidal & Petrak, 2007).

The court process in Sweden

In Sweden the court proceedings can be described as relatively informal compared to Anglo-Saxon countries. There are, for instance, no jurors in Sweden (Dahlberg, 2009). The procedural system is adversarial and the responsibility for the production and presentation of evidence lies with the prosecuting and defending parties. As per the oral principle (Code of Judicial Procedure, 1942, 46:5) and the principle of immediacy (Code of Judicial Procedure, 1942, 30:2), all evidence must be presented orally during the district court hearing. These oral presentations can be cause for strong emotions and reactions, while scrutinising questions by opposing counsel can be considered victim blaming (cf. Dahlberg, 2009; Flower, 2018; Törnqvist, 2022; Wettergren & Bergman Blix, 2016).

According to the Swedish law on plaintiff's counsel (Law [1988:609] on plaintiff's counsel, § 1, p. 1) there is a requirement that a legal representative should be appointed for the plaintiff as soon as the preliminary investigation is initiated in all types of sexual offences (Act amending the Act [1988:609] on plaintiff's counsel). The counsel's role is to support the plaintiff's position during the criminal investigation and the legal process (Holmberg & Lewenhagen, 2019). The legal counsel can also provide emotional support (Carroll, 2022). In assault and fraud cases the conditions for appointing a legal representative are more restrictive: the crime should be considered severe with impending imprisonment or that there is a particularly strong need for counsel for the plaintiff (Gov. Report, 1998:40, pp. 124–125). The trial in Swedish courts is divided into four phases: the reading of the charges and the defendant's response (guilty or not guilty), the presentation of facts by the prosecutor, the cross-examination by defendant's counsel and finally the closing arguments (Flower, 2018).

METHODS

The crime cases in this study have been identified using the database Karnov, which publishes all general court verdicts in Sweden on a weekly basis. This study is part of a larger project where interviews with both plaintiffs, judges, lawyers, recorded interrogations (with both plaintiffs and perpetrators) and the written court verdicts have been collected.[1] For a case to be included in the project the plaintiff had to be over 18 years of age. Plaintiffs in rape cases were contacted through their

[1]This study was financed by Swedish Research Council for Health, Working Life and Welfare (Forte) 'The relation between perception and attribution of guilt in court hearings—comparing rape, assault and robbery'.

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TABLE 1 Case information.

	Plaintiff		Verdict		Defendant	
Crime	**Women**	**Men**	**Acquittal**	**Conviction**	**Unknown**	**Known**
Rape	10	–	4	6	2	8
Assault	4	6	1	9	6	4
Fraud	3	7	1	9	7	3
Sum	17	13	6	24	15	15

legal representatives, due to regulations on confidentiality, who in turn relayed our request for participation to the plaintiffs. In the assault and fraud cases the plaintiff contact information was retrieved from the court verdict documents and the plaintiffs were contacted directly, first by a written request and then by telephone. A total of 30 interviews have been analysed in this study (Table 1).

The main differences between these crime cases are the plaintiff's sex, the verdicts and whether or not the defendant was previously known to the plaintiff. Over half of the all interviewed plaintiffs were women, in the rape cases, 100% of the interviewed plaintiffs were women. Of these cases, 80% of the verdicts were convictions, while specifically the rape cases (studied here) had a lower conviction rate. In comparison, the rape cases had a higher rate of previous acquaintance between the parties. The material was collected during 2019 and 2021, when the consent legislation regarding sexual offences had come into force (1 July 2018). The project utilises data that are sensitive. Studies has for instance shown that victims in rape cases can be traumatised (for a review see Lomax & Meyrick, 2022). The study followed ethical guidelines and national laws (SFS, 2003:460), which meant, among other things, that informed consent was obtained from the interviewees. They were also informed of their right to withdraw at any time during the research process. The project has been approved by the regional ethics review board (Dnr 2018/218). In the presentation of empirical data, persons and places are anonymised.

In the interviews, the plaintiffs were asked to talk broadly about their experience of the court process, from the crime event to when the interview was carried out. Semi-structured questions were then asked about their experience regarding any associated feelings of guilt or whether they felt guilt-imposed. The interviews were conducted after the verdicts had been announced. All interviews have been transcribed to allow directed content analysis (Hsieh & Shannon, 2005). Data have been imported to NVivo, a software for managing and analysing qualitative data.

An interpretive qualitative analysis has been carried out. Guilt as an emotion is conceptualised as socially constructed and the analysis is inspired by discursive psychology which is both a theory and method based on social constructionism (Wetherell, 1998; Wood & Rennie, 1994). According to this perspective we cannot really capture how the interviewees experienced guilt, only how they talked about this feeling. This is interesting since language shapes what we can call reality. Discursive psychology focuses on the psychological motives and morals that underpin talk about a phenomenon. We have captured discursive functions in terms of interpretive repertoires, which can be described as recurring modes of expressions that will fulfil specific functions within the framework of a given discourse (Hollander et al., 2007; Jacobsson & Sjöström, 2016; Sjöström et al., 2017; Wetherell, 1998).

FINDINGS

Many of the interviewed were flexible when they talked about guilt in relation to the crime event and the court process. They could express both that they did and did not felt guilt (A4, A5, A6, F1, F9, R1, R3, R4, R7, R9, R10).[2] Differences were noted between how the interviewees in the different crime types described their feelings. Specifically in the rape cases the notion of guilt was found more prevalent and, in all the case types, it was noted that the women talked more about feelings of guilt than the men. In the following analysis, we have found three different repertoires: self-blaming, guilt-imposed and guilt-resistance.

Self-blaming repertoire

In the self-blaming repertoire, the plaintiffs talked about their own feelings of guilt, both in relation to their character and behaviour. The repertoire was mostly expressed

[2]R = Rape; A = Assault; F = Fraud.

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in rape cases, although some examples were found in the fraud cases as well. Plaintiffs in rape cases blamed themselves for being uncritical in relation to the crime event and that they should have been more thoughtful. They asked themselves questions such as: 'Why did I do so, why did I not do so?', 'Damn, it was my fault and why should I have sex, why did I say yes', 'Why did I take the initiative. My fault, it was me who wanted to'.

Excerpt 1:

> I'm ashamed to have put myself in this situation. Yes, I am ashamed of it, and it has been hard to share that I have been so exposed. It has been hard to say the words to people because it is so revealing. That I am ashamed of myself and that I have done this. It's my fault that his [defendant's] life is ruined. I am ashamed that I ended up there. And the guilt for having placed this burden on so many others. That it has caused so many problems for, so many. My husband, my children have of course noticed that I have been quite depressed. (R4)

As we can see in the excerpt above the plaintiff expressed 'shame' in relation to her behaviour and how she perceived it to affect the people around her, a sense of what Janoff-Bulman (1979) call behavioural self-blame. Guilt for reporting the crime, and shame in regards to her family. She talked about her own responsibility when referring to her acts, 'I put myself', 'I have done this'. She blamed herself for being exposed to crime, while at the same time she was pleased with herself for reporting the crime. Another plaintiff expressed that 'you can want to have sex and then change your mind', which is in line with the law which states that the consent must be present throughout the whole sex act. Examples of a self-blaming repertoire can also be found in the fraud cases. One interviewee state:

Excerpt 2:

> I should not have been be so naive. Normally I'm not. But there were emotions involved in this / ... / You can be ashamed that you were so damn blue-eyed and fell for this. / ... / It's a shame really. Normally I would never have done it / ... / But now I did and of course that is damn embarrassing. So, it's probably more of shame than of guilt. (F2)

In this excerpt the plaintiff from a fraud case expresses a sense of characterological self-blame (Janoff-Bulman, 1979) when she speaks of her naivety and that she did not realise that she had been deceived. Plaintiffs in fraud cases tended to talk about guilt in terms of shame rather than guilt, as also was expressed in the excerpt below.

Excerpt 3:

> I can feel shame. I felt a great shame when it had been revealed and what I had been exposed to, precisely because one felt damn stupid that I had let someone fool me in this way. I felt shame then but I didn't feel any guilt / ... / I only had good intentions and she used my kindness. I had been deceived so thoroughly, and in that I felt shame afterwards, but I didn't feel any guilt. (F9)

In the excerpt above the interviewee expressed shame about his own character with an extreme case formulation (Pomerantz, 1986) in that he felt 'damn stupid', but not guilty because he meant that he had behaved, according to his opinion of the situation, correctly. One important thing to note concerning the fraud cases we examined is that there is a large span in degree of severity of crime: from simple cases such as an online mobile phone purchase that was not received, to having been cheated out of large sums of money by relatives or love-partners. The feeling of shame tends to diminish with the lessening severity of the crime. In the self-blaming repertoire plaintiffs in rape cases talks mainly about their behaviour in terms of guilt, plaintiffs in fraud cases about their character in terms of shame and in assault cases plaintiffs did not express a self-blaming repertoire at all.

Guilt-imposed repertoire

In the guilt-imposed repertoire, plaintiffs expressed that they felt attribution of guilt by others. This is mainly, but not only, something they talked about in relation to the court hearings and verdicts. Very few felt guilt-imposed by professionals, such as the police, during the preliminary investigation phase. Some of the interviewees from the rape and assault cases (A3, A9, R2, R4, R5, R8, R10) expressed that they felt blamed by their colleagues, family, friends and/or by society. In the excerpt below is an example from an assault case:

Excerpt 4:

> There were friends I know who asked 'What did you do?', 'What did you say?' Lots of questions like that. But they know me and know I wouldn't do something like that. (A3)

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According to the plaintiff, who was a young man, his friends were asking questions that can be regarded as guilt-imposing since they asked about his involvement in the crime event. Although, he did not describe it as guilting. In rape cases, plaintiffs were using a guilt-imposed repertoire about how they felt guilted by 'society'.

Excerpt 5:

> Society is very clear about how girls should behave. It is always the woman who should be afraid of someone else. It is always the woman's responsibility in some way. (R2)

The plaintiff talked about values and assumptions about rape and sexuality that she meant are influenced by a wider social context, something she articulated as a truth. It was not talk about how she personally had been guilt-imposed. She positioned instead herself in relation to what she believed others were thinking. The plaintiff also expressed it in terms of culture.

Excerpt 6:

> It's like, depending on what culture you are from. In some cultures, women's sexuality must be protected. Not all cultures, but there is a certain mentality around women. How they should behave, how they should talk, how they should sit, how they should talk to guys. If there is a girl who is raped, it is her fault, she is wearing a short skirt and to first say that 'yes I want sex' and then change [her mind], it is considered to be the woman's fault / ... / So this, the feeling of guilt as it is a part of society around one that can characterize one / ... / My mother has told me, when I was ten years old, she said to me, 'you must not have sex with anyone before you get married'. (R2)

The interviewee's statement can be interpreted as she felt more guilted than others since she was rooted in a culture where there is a stronger control over women. Another interviewee said that she was afraid to tell her family about the crime event and the court process because she was afraid of their reaction. She also described how these notions of guilt negatively affected her mental health. When plaintiffs in rape cases talked about feelings of being guilted by friends and society, it was usually an inferring of what others were thinking.

Many of the respondents expressed that they felt attributed guilt in the court hearings. Two of them said that they felt guilted by the judge and the lay judges (nämndemän) (R5, R8). No one expressed feelings being guilted by the prosecutor. Plaintiffs, in all of the rape cases, eight of the assault cases (A1, A2, A3, A5, A6, A7, A8, A10) and three of the fraud cases (F1, F2, F5), said that they felt guilted by the defence lawyer. Although, they also had the understanding that the defence lawyer's role is to defend the defendant.

Excerpt 7:

> It is clear that a defence lawyer always tries to turn it to the advantage of the perpetrator. Otherwise, the lawyer doesn't do his job. (F2)

Excerpt 8:

> So very typical, legal stuff. He asked questions that were questionable. Now he didn't succeed against me, but I can imagine that he succeeds in some cases. He would turn it around so I could object and so on. I felt it was a typical lawyer thing to do. (A3)

Excerpt 9:

> [...] it's his [the defence lawyers] job to defend him [the defendant]. But he was hard and I cried. I know it's his job to break apart my story and it's not very odd, that he would do it. (R2)

Understanding the defence lawyer's role did not, according to the interviewed diminish the feeling of guilt associated with the line of questioning during the interrogation.

Excerpt 10:

> Plaintiff: So, he wanted it to be that I hit him [the defendant] first.
> Interviewer: Like trying to say that you were somehow a bit involved?
> Plaintiff: Well, of course. It's clear he was trying to put it that way. That I would be the one who initiated it all and started it, there would be many questions like this: 'It could have been so', but there are no facts that prove it. So there were a few such questions where he tried to make me uncertain. (A5)

In rape cases, the plaintiffs expressed guilt in relation to what can be regarded as rape myths, both in relation to society/friends/family and the defence lawyers. Rape myths are based on the idea that women themselves, at least to some extent, are responsible for what has happened and that they did not do enough to manage men's

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expectations (cf. Burrowes, 2013; Randall, 2010; Temkin et al., 2018). Excerpts from the interviews below show how the plaintiffs felt guilt-imposed by the defence lawyers.

Excerpt 11:

> It was a young woman [the defence lawyer], who did this to me, so it was a complete violation again. It was so ugly how she twisted every single thing I said beyond recognition. Of course, she has to do her job and defend him, I get that. But, it was really just the way you imagine it to be when you are cross-examined in a situation like this, it was very difficult afterwards. Very, very difficult. But they push buttons, and they use different tactics to get one out of balance, and say, or say the wrong things, it's a strategy on their part. My husband's sex life, I mean, well, what does that have to do with anything. I perceive it as her trying to trigger me so that I would go into something like, you know you'll get stressed and start chatting like that, and that's her job. So, I get it. And the only thing I felt then was just that, well my strategy was to answer yes or no. (R4)

The plaintiff expressed that the defence lawyer's argument inferred that she had been unfaithful due to an unsatisfactory sex life in her marriage, and now, regretting the extramarital affair, was giving false testimony. She felt betrayed by her own gender and that she [the lawyer] 'should have known better'. As seen in the examples below, the plaintiffs also indicated feelings of being guilt-imposed by the defence lawyer for wanting the sex, meaning that they had somehow encouraged the defendant.

Excerpt 12:

> And then she [the defence lawyer] stands up and says, 'Yes, Marie did not take the bus home because she wanted to sleep over'. Really emphasized 'wanted'. 'And she did not get up and leave when he had fallen asleep, because she wanted to sleep there. She wanted to stay. And she wanted to have sex with him'. / ... / And also, then I felt that she even then wanted to mark that, that he was not the only stupid in the situation. (R10)

Excerpt 13:

> [...] his defender asked the question 'so you knew he had feelings and it was you who opened the door, it was you who voluntarily let him in'. He wanted to show in some way that I am guilty too. (R1)

Excerpt 14:

> 'The door was not locked', and why was I even there when he had exhibited some violence against me before / ... / [the defence lawyer] basically says that you must blame yourself for being raped because you followed him inside. (R5)

This form of questioning is legally irrelevant, since according to the law it is not a question if the plaintiff wanted sex or not. Although, in the case of Excerpt 14, the line of questioning can be regarded as relevant as it is unclear why the victim voluntarily followed the defendant, a person whom she did not know well and whom, as she said, had shown previous violent tendencies, home. The victim, then, did not leave after the first rape, when the defendant had fallen asleep, due to 'frozen fright' and subsequently was raped again when he woke up. Even though this line of questioning can be regarded as relevant, the interviewee interpreted it as guilt-imposing. Below there is another example of what can regarded as guilt-imposed questioning about the plaintiff's moral character.

Excerpt 15:

> [...] during the trial, the guilt came back to me. Because then his lawyer had a lot of explanations for why I had reported it. It was everything from that I wanted compensation, I wanted the money, to that I wanted revenge for a friend. He asked my mother if I was a slut (lösaktig) / ... / Yes, exactly this thing, because I never said 'no' during the event. Well, yes, I had to blame myself a little. And then he thought I could leave, go from there like this. So, it was all the time like I could have done that, he thought. (R8)

The plaintiff indicated that her character came into questioning during the interrogation by the defence lawyer, as she was labelled as a liar and a slut, which was especially difficult since the questions were directed to her mother. In this excerpt the interviewee exhibited both a guilt-imposed and a self-blaming repertoire. The plaintiff's feelings of being guilt-imposed seemed to strengthen her self-blaming emotions. Most of the respondents from fraud cases did not, during the interviews, express similar guilt-imposing questioning in the

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court hearings. Fraud cases are quite uncomplicated in a legal sense as the evidence is often solid. In comparison, in the assault cases the plaintiffs indicated that the defence attorney's line of questioning, however awkward, were not interpreted as guilt-imposing.

Guilt-resistance repertoire

As the analysis has shown, the guilt-imposed repertoire was expressed by all plaintiffs in the rape cases. Some of the plaintiffs responded passively to the defence lawyers' guilt-imposing line of questioning while others seemed to be more resistant and active during the court hearing and responded actively in court. For example, Excerpt 16 (see also Excerpt 11) describes a situation where one plaintiff expressed that they opposed the defence lawyers' questions by turning to the judge.

Excerpt 16:

> I just felt, it doesn't matter if I and my husband have sex with each other at all. It has nothing to do with the thing, so I looked at him [the judge] and I just said this: 'Sorry but I don't understand what this has to do with. Do I have to answer this, because this is not relevant? It has nothing to do with what he has done to me'. Then the judge said that 'You know, I actually do not think so either, I think you can skip answering this'. (R4)

The plaintiff was very pleased that she questioned the subject of the interrogation, and received a positive reinforcement of support by the judge. There are several other examples of how the plaintiffs expressed that they acted and questioned the defence lawyers' guilt-imposing strategies. The plaintiff in Excerpt 17, talked about a shift in the society on how rape victims are being defined, that the younger generation is more educated and has better knowledge of the legalities of the system.

Excerpt 17:

> The technique that was used is something that the younger generation is aware of. My prior knowledge made me able to see through, you kind of knew what answer he wanted. It could be 'Did you put on make-up in the morning?' And then I said 'It doesn't belong here, what does it matter?', and then there was like no answer to the question I asked back / ... / it was a bit provocative, but since I have prior knowledge, maybe I did not put any guilt on myself / ... / And then I said it. 'Do you also ask if you were assaulted or is it enough to say I was beaten and kicked on the street?' / ... / I just refused to be, suppressed in there. / ... / It doesn't matter if I was kissed by this person on the street five hours before. It doesn't give anyone the right to behave like this later. (R9)

One interpretation that can be made from the quote above is that she had a pre-understanding about how rape victims were being guilt-imposed in court hearings and that she therefore was prepared for how to resist the guilt-imposing questions. Konradi (1999) who interviewed, what she called rape-survivors also found that some of them did not talk about themselves as passive victims, instead they talked about strategies to strengthen their positions.

Experiences of guilt in the verdicts

The plaintiffs expressed that they were both satisfied and dissatisfied with the verdicts. In cases where there were convictions plaintiffs were, of course, more satisfied with the verdict, it is important to win the case (see also Laugerud, 2020). Only four of the interviewed (A7, F5, R5, R6) were explicitly dissatisfied with the legal process. In three of these cases (F5, R5, R6) the verdicts were acquittals. As one of them expressed it:

Excerpt 18:

> I'm terribly sad, I feel disgusted, that is [gets sad, sighs]. Because it's so sick in the verdict that they write that he is considered more credible than I am/ ... /this whole process has been my fault as well, that he was released. It feels like it's me who did wrong / ... / I feel kind of ashamed, disgusted. I don't want people to believe anything like that about me, that I would lie. It hurts. (R6)

In the above excerpt the plaintiff was talking about the text in the verdict as a secondary victimisation. Secondary victimisation refers to a further violation of legitimate rights, of victim-blaming reactions that victims experience after a crime (Orth, 2002). She expressed that the verdict made her feel worse and that she regretted reporting the crime.

An assumption that can be made is that plaintiffs with conviction verdicts were satisfied that they won the case. Surprisingly, in two rape cases with acquittals, the plaintiffs expressed that they were satisfied with the legal process. As one of them expressed it:

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Excerpt 19:

> It is quite difficult to be convicted of rape. Even after the new law came into force. Yes, it would have been nice to see him in prison, but my mother said it like this: 'He has probably learned a lesson. He mentioned during an interrogation, that there are people who have really turned their backs on him' / ... / even a social punishment is a punishment. And mother said it like this: 'In the same way that you might have felt it was difficult to go to interrogation, imagine being the one who goes there for a completely different reason'. Now, of course, we appealed and the prosecutor appealed too. And Mom said: 'Try not to think about it. Because he is still waiting to find out if he will be convicted of negligent rape or not. He is the one who is waiting to pay for damages'. I certainly had a hope that he would be convicted and I guess I still do since we have appealed. But it feels like reporting was important / ... / When I reported the crime they [the police] said: 'Just because he's not convicted it doesn't mean that it didn't happen. It just means that it can't be proven'. (R7)

The plaintiff expressed that the court process in itself had been a punishment for the defendant, even if there was no conviction. She used a guilt-resisting repertoire and positioned herself as an actor who acted according to her values.

DISCUSSION

This study, as well as others (cf. Parsons & Bergin, 2010) indicate that the criminal justice system can have both negative and positive consequences for the plaintiffs (victims). For social workers that often encounter crime victims in their work, it is important to note that crime victims can react in different ways in order to prevent secondary victimisation. An overall result from this study is that plaintiffs in rape cases construct a more self-blaming and guilt-imposed repertoire than plaintiffs in assault and fraud cases. One explanation to this can be that rape is by many considered as extremely traumatic (cf. Gemberling & Cramer, 2014). Part of what can make the crime traumatic is an internal inference of what the victims believes are societal judgements regarding their behaviour and character, so called rape myths where the blame for the crime is placed on the woman. The victims of fraud cases indicated in the self-blaming repertoire that they acted empathetically and logically based on a personal perception of the situation, at the same time expressing feelings of shame upon being so easily deceived. Their self-blame can be based in the context of moral values that victims of fraud are gullible and naive, something that could be explained as a 'fraud myth'. Interesting to notice is that plaintiffs in assault cases does not use as self-blaming repertoire at all.

When it comes to the guilt-imposed repertoire the plaintiffs felt guilted by societal norms as well as by the defence lawyer in the court hearing. They indicated that family and friends were supportive but at the same time they felt guilted by them. In rape cases plaintiffs internalised moral values about what they believed people were thinking about women, sex and rape. The plaintiffs expressed that they were aware of the general structure of the logic in the legal discourse. They understood the defence lawyer's role to question them in order to defend the defendant and to check for consistency in their accounts. Even if they were, intellectually convinced of their innocence, all of the interviewed said that the court hearing was emotionally exhausting. In rape cases, however, the interviewees expressed criticism that the defence attorney's questions largely were moral.

Laugerud (2020) showed in her study that rape victims used game metaphors such as 'winning the case' when they talked about the trial and their participation in it. They understood that their case was not only relaying on forensic evidence, they had to be strategic an 'actively engage in appearance work and discursive strategies to pursue their aims in court' (p. 272). This study shows that some plaintiffs expressed that they were attentive, active and questioning when they felt they were being blamed in the court hearing. In the interview they used a guilt-resisting repertoire when they talked about how they responded to the defence lawyers' questions (see also Konradi, 1999; Larcombe, 2002). They expressed that they were aware of existing moral values such as rape myths and that they wanted to resist those values. It is also interesting to notice that there were examples of plaintiffs from rape cases that were pleased with the court process, even though their cases resulted in acquittals. They talked about a new generation that is more enlightened with knowledge of how the legal system works, and that the legal process in itself could be a punishment for the defendant even if he not was convicted.

With this in mind, it can be significant for social workers to gain a better understanding about the legal process. Social work is largely about empowerment, helping people take control of their lives and changing contexts that perpetuate social problems. On a macro level, it is about questioning ideological beliefs about myths, on a

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micro level, it is about empowering crime victims to increase their sense of control. Crime victims can either see themselves as victims of sexual violence, fraud or assault, or as survivors and actors who, instead of blaming themselves, place the blame on the perpetrator.

We cannot in this study really know if and, in that case, how the plaintiffs were guilt-imposed in the interrogation and if there are differences between rape, assault and fraud cases. In an upcoming article discursive practices in the actual interrogations will be studied, which makes it, to a greater extent, possible to compare the plaintiffs perceptions of being guilt-imposed with discursive practices in the interrogations.

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The author declares no conflicts of interest.

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Research data are not shared.

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