

Assessment of Criminal Imputability in Sexual Crimes

Leticia R. de Almeida¹, Alexandre Martins-Valença²

This article aims to define sexual crime, to study the relationship between sexual crimes and mental disorders. Aspects of psychiatric expertise of individuals Who have committed sex crimes are also described. The assessment of criminal liability is extremely important in order to adjust, in each case, the application of security measures and appropriate criminal and correctional penalties.

Keywords: sexual crime; rape; psychiatric expert analysis; penal liability.

Sexual crime is deemed as a violent behavior. The latter may be defined as the deliberate use of force or physical force against a person, whether it is as coercion or as an objective, thus causing physical or moral suffering to the victim, which deems this as criminal behavior. In turn, sexual crimes are all those criminal acts whose purpose is to obtain sexual satisfaction (motivational approach) or those whose nature is sexual intercourse in any form (legal approach)¹.

Sexual violence is a multi dimensional concept having various definitions, depending on the professional group or the context it is used in. According to Bradford et al.², sexual violence may be defined as any sexual behavior against a person who has not approved such, including physical violence linked to a paraphilia. generally, this includes extreme physical violence, linked to coercive sexual intercourse. As violent acts are committed against a couple who has not allowed such,

people committing these felonies are deemed as offenders or sexual criminals.

Sexual violence is a world phenomenon causing long lasting damages on people's mental & physical health. There are some short/ long term sexual & reproductive consequences for the victims, as well, such as infections caused by the HIV virus³. This type of violence is used against men and women of all ages and may be represented in many ways. It is not limited only to un-consented sexual intercourse (rape or attempted rape), but it may involve penetration of other body parts, using penis, fingers or other objects. Other sexual crimes include caresses or improper affection acts, such as kisses, harassment, coercion, etc.

It is well known that the amount of accusations linked to this type of crimes is actually much lower. This happens, because of the vow of silence shared among victims, families, and society. Shamed victims fear the impact of their confessions, not to be believed or to be accused

The authors declare that they have no conflicts of interest with respect to this study.

Accepted: 2020/08/06

Received: 2020/03/04

¹ Forensic Psychiatrist - Instituto de Psiquiatria-Universidad Federal de Rio de Janeiro - IPUB-UFRJ.

² Psychiatry, Master and Doctor -Instituto de Psiquiatria-Universidad Federal de Rio de Janeiro - IPUB-UFRJ. Associate Professor of the Psychiatry & Mental Health Department - Universidad Federal Fluminense - Niterói-RJ.

or expelled from their social environment. Prevalence, impacts and the sequences derived from this situation have made health/human rights scholars and researchers to be focused on it.

Biopsychological criterion, applied in countries such as Brazil demands to do research on actual causal relationship between the anomalous mental status and the committed crime i.e. this status -contemporary to the behavior- must have fully deprived the offender in part or in its entirety of any of the aforementioned psychological capabilities (whether they are intellect or volition). It is not enough to diagnose mental disorder, but it is also necessary to investigate if this situation has impaired a person's understanding and determination and how this happened. In the assessment made during the expert analysis, the expert must investigate both criminogenic factors (causes of the crime) and also the dynamics of the crime (how it happened, what is its dynamics). If doubts arise about the mental health of the accused person, it is necessary to perform a forensic psychiatric examination

During the expert analysis linked to these sexual crimes it is very important that the expert search all data included in the criminal procedure dossier, such as circumstances and place of the crime type of sexual crime, victims, age of the victims, testimony of the witnesses and offender during the testimony before the police, etc. During the psychiatric interview the expert has to assess the testimony of the offender regarding the crime he/she is charged apart from understanding his/her behavior before, during and after the crime. Next the expert will collect the data to provide ground for the anamnesis i.e. background of the existing illness (in case there is a report), personal/family/psychosocial background. Next the expert will describe the psychological examination, report if there is a mental disorder and assess the mental status at the time of the facts (asses understanding and determination). Finally the expert will answer the questions from the stakeholders, such as trial, attorney, advocacy, defense attorney, etc.

Sexual criminals who do not have a psychiatric diagnosis, once full understanding and determination is proved, they become chargeable. Paraphilias are preferably sexual

disorders which do not cause clouding of consciousness, sensory processing disorders or loss of reality. Therefore, most people suffering paraphilias with no psychiatric comorbidities are chargeable. In schizophrenia and other psychotic disorders, sexual crimes may be motivated by delirium and hallucinations. In these cases lack of imputability is very common, with statement of security measures (final judgment). In sexual crimes committed by maniac patients, lack of imputability is more common, as long as mood disorder impairs understanding and determination linked to the crime. Generally, dementia symptoms with severe cognitive impairment are also deemed as lack of imputability. Concerning mental retardation, lack of imputability depends on the degree of such mental retardation. Mild and moderate symptoms may be deemed as full or partial criminal liability. Often, severe mental retardation ends up to be deemed as lack of imputability

Connor et al.⁴ described prevalence of physical and sexual aggression in the adult population in New Zealand during 12 months. It was a populations study on 16.480 adults with automatic online interviews. 1% of women and 0.4% of men reported sexual aggression. 45% reported more than one sexual aggression. Sexual aggression victims reported offenders used alcohol during 57% of cases. Offenders using alcohol at the time of the sexual aggression were not acquainted of the victims. Aggressions seldom happened at the victim's home, compared with aggressions where offenders did not use alcohol.

Apart from the impact of sexual aggressions and suffering caused to the victims and relatives, alcohol/drug-related sexual aggressions have consequences for police/judicial/health authorities. Langevin y Lang⁵ highlight the importance to include substance abuse in the assessment and treatment of sex offenders reporting that literature findings have found more person who has an alcohol use disorder among sex offenders than common population. Drugs and alcohol abuse is a constant concern for professionals who work with sex offenders. These professionals must be trained on drugs and alcohol abuse.

Forensic and psychiatric assessment

regarding criminal liability of sexual crimes is carried out when analyzing understanding and determination of the person under expert analysis. In turn, assessing these aspects involve a comprehensive study of the criminal procedure dossier, personal/family/psychological/social background of the person under expert analysis, and also the psychopathological examination. The latter involves knowledge on psychopathology plus a comprehensive investigation of all brain functions of the person during the psychiatric interview, such as consciousness, reality judgment, sense perception, intelligence, affectionateness and will. No doubt, psychopathological examination is fundamental during expert analysis of criminal liability, in these cases.

Research on etiology of sexual crimes and assessment of sex offenders is the only way to reduce consequences and costs of these problems for society, apart from the suffering caused on victims. Treatment for drugs & alcohol-related problems may contribute to reduce recidivism of sex offenders, apart from inserting them in a therapeutical environment.

References

1. Duque C. Parafilias e Crimes Sexuais. In: Taborda JGV, Chalub M, Abdala-Filho, E, eds. Forensic Psychiatry. Porto Alegre: Artmed, 2004; p. 297-314.
2. Bradford, JM. Sexual deviancy. *Current Opinion in Psychiatry* 1994; 7: 446–451.
3. Krug EG, Dahlberg LL, Mercy J, Zwi AB, Lozano R. eds. World report on violence and health. Geneva, World Health Organization 2002; p.147-179.
4. Connor J, You R, Casswell S. Alcohol-related harm to others: a survey of physical and sexual assault in New Zealand. *N Z Med J* 2009; 122 (1303): 10-16.
5. Langevin R, Lang RA. Substance abuse among sex offenders. *Ann Sex Res* 1990; 3:397-424.

Correspondence to:
Leticia Rodrigues de Almeida,
Avenida Prado Júnior, 135/1005,
Copacabana, Rio de Janeiro/RJ.
phone: (21) 985523453