Interviewer constructions of rape perpetrators in police interviews with rape victims

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Background

Two studies conducted as part of my PhD found: 1) the general population; and 2) professionals involved with rape cases, were **more likely to accept perpetrator related stereotypes over any other type** (e.g. 'most rapists are strangers'), with very little difference between the two samples. Professionals who had rape stereotype training were also significantly less likely to endorse them, although only 10% of the sample had received training.

These perpetrator related stereotypes, while not directly related to victims, are still harmful. The End Violence Against Women Coalition (EVAW) has recently brought a case against the Crown Prosecution Service (CPS) due to low prosecution rates (2019), and presented evidence that they are only taking on **'easy cases', which are ones recognisable to juries—the rapist was a stranger, and the circumstances were clear.**

Consequently, **defence lawyers use stereotypes in court; jurors may not believe victims,** especially in acquaintance rapes, which make up 85.8% of all rapes (ONS, 2020); and **these factors affect the police, who may rely on stereotypes when interviewing victims.**

These issues lead to the aim of exploring police interviews to understand how question formulations impact victims. My work with the interview data gave rise to the research question: when interviewing rape complainants, **how do interviewers construct the perpetrators?**

Methods

My research method is a Discourse Analysis, with elements of Conversation Analysis. I transcribed 10 police interviews with rape victims—all victims were women, and interviewers were a mix of men and women. I then carried out several 'passes' of the basic transcripts, discovering that there was **little-to-no use of victim related stereotypes, but many examples of perpetrator related stereotypes**, supporting my previous studies' results. This narrowed down my research question to its final version.

I then identified useable 'extracts' within each interview, on which I carried out deeper-level transcription, to discern **tone, intonation, volume, speed of talk, and gaps and overlap.** Overall, I identified 25 extracts from the 10 transcripts. I am currently finishing up transcription on these and noting patterns ready for my final analysis.

Findings

Obscuring Mens Rea

I have found two different ways of constructing the perpetrator within these interviews, both of which obscure the Mens Rea element of rape (the perpetrator's 'guilty mind'). These are 'perpetrator misunderstands non-consent', and 'passive/agentless talk', examples below.

Perpetrator misunderstands non-consent

Extract 13, Interview 6. 1:26:11-1:28:15

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46   INT6: Mmm? (1.6) Were there any visible signs to him
47        (1.5) of how you were feeling_=
48   WIT6: =Cause >he-he-he< said (0.9) he (.) i-like (0.5)
49        ih- (0.2) he said are you upset, (1.1) Like are you
50        sad like he m- .hhh he ^musta kne:w^?
51   (1.7)
52   INT6: Is there- is there anything (.) that (0.3) was
53        happening at the time that would give him the .hh
54        the thoughts that you were upset_
55   (1.3)
56   WIT6: hhhh i dih-i dih- (1) i didn't whatsitcalled i
57        didn't cry or anything during,
58   INT6: okay,
59   (0.9)
60   WIT6: Like (1.6) i did-i did afterwards.
61   (.)
62   INT6: °Mmm°,
63   WIT6: But that's when he'd gone ~anyway~.
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This excerpt gives an example of the police interviewer constructing the perpetrator as potentially misunderstanding the victim's nonconsent, given that she did not display the 'proper' levels of emotional distress, i.e. crying. If she did not show any physical signs of distress, the perpetrator could claim they did not know, despite repeated verbal non-consent and lack of any positive consent, thus obscuring Mens Rea.

Passive/agentless talk

Extract 15, Interview 7. 47:51-49:27

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1    INT7: So you know >when you were< talking about your
2         He:ad,=
3    WIT7: =Yeah.
4    INT7: .hhh How many ti:mes (0.3) d'you think that (.)
5         your head's been banging,
6    (3.5)
7    WIT7: °say about four ti:mes°,
8    (0.4)
9    INT7: .hh And whe:re has your head been banging,=
10   WIT7: =Like twice on my front and twice on my back, .hh
11        Not sure if it was any mo:re I was just (0.6) I
12        think it was about four times,
13   INT7: .hhh Okay, (2.1) AND HOW'S YOUR HEAD BEEN BANGING
14        (.) how has that come to be,
15   (0.4)
16   WIT7: °Mm cause I° wouldn't let him do anything so (.)
17        like .hhh I remember on my front, he kept like
18        grabbing my ha:ir, (.) ((grabs own back of hair
19        with hand))
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This excerpt is an example of 'agentless' and 'passive' talk— talk in which the passive voice is used instead of active, and no particular agent (i.e. the cause or initiator of an event) is referred to. Here, the passive voice was used to refer to the perpetrator banging the victim's head against the floor, as was discussed earlier, and no responsibility was attributed to the act of banging her head "...your head been banging...", despite the perpetrator having initiated it. This also obscures Mens Rea.

Discussion

The findings so far are in line with previous studies. Regarding misunderstanding constructions, Kitzinger & Frith (1999) posited a "miscommunication model" of accounting for rape, and found that **women found it difficult to directly refuse sex ('just say no'), and men claimed to misunderstand indirect refusals such as body language or other nonverbal cues.** Later, O'Byrne, Hansen & Rapley's (2008) study further supported this latter claim, finding that the men studied often **claimed misunderstanding when discussing rape.**

In terms of agency and passive vs. active talk, Henley, Miller & Beazley (1995) found that when agentless passives were used, less harm to the victim and less responsibility to the perpetrator was attributed. Ehrlich (2001) discussed the way **grammar (e.g. passive voice and agentless grammar) is used to represent perpetrators as innocent or less culpable of rape.** When used in police interviews, it is possible that the passive nature of the talk could go on to be used in courts or CPS decisions to diminish attributions of harm or responsibility.

The former studies related to men's constructions of themselves, and also the media's reporting of rape (Henley, Miller & Beazley, 1995), but it is clear from the extracts that **the constructions found in the current data are also utilised in police interviews**, and McLeod (2010) supports this, with examples of both constructs present in her data.

It is critical to consider potential applications of these findings. As three linked parts of the justice system—the CPS, juries, and police—are all affected by these issues, it is important to address each. **Jury training on rape stereotyping**, as well as more widespread training for professional populations, is critical. Juries could then decide based on fact rather than erroneous beliefs, giving room to **enact policy change within the CPS, ensuring cases are taken on fairly**, i.e. not on an 'easy/difficult case' basis. This could then have a positive effect on police interviewing techniques, with less need for constructions such as these, as cases should be taken to prosecution on a fairer, less stereotyped basis. In the end, **these changes could help ensure justice for those rape victims who wish to pursue legal action.**

References