

WOMAN IN RAPE: A VICTIM OR A CRIMINAL?

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An acting edition of article 118 of the Criminal Code of the Republic of Uzbekistan allows to put into practice the thesis according to which the subject of rape can be not only male, but also a female. However, lately its application becomes complicated with retrospective position of Plenum of the Supreme court of the Republic of Uzbekistan expressed in the Decree "On court practice on cases of rape and satisfaction of sexual need in an unnatural way"¹, which does not belong to the category of criminal-legal sources, but is obligatory for execution by judicial bodies when considering corresponding category of cases.

The subject of rape under the criminal legislation of a number of far abroad countries, as well as the countries-members of CIS (except Moldova, the Ukraine and Uzbekistan) is exclusively defined as male.

We want to clarify whether it is fair. Whether the cases of men raped by women are theoretically and-or practically impossible? Or, having enlisted scientists' support, members of parliament of the

specified countries leave male population unprotected against this kind of sexual aggression having no grounds for that?

We began searching the answer to the given question with acquaintance with chronicles of criminal incidents in the world practice.

According to Nizhniy Novgorod cable agency messages in September 2005 in Avtozavodskiy district of Nizhni Novgorod three women raped a taxi driver [8].

Some time ago "Arguments and Facts" told about a case of rape of the man by Russian women. In the middle of 90-s of the XX-th century a group of female-prisoners escaped from the colony in Krasnoyarskiy krai, taking a security guard with them. In the forest warden's hut they bound genital body of the victim, forced the captive to enter with them into sexual contact through several hours [8].

The first descriptions of similar cases in Russia appeared at the beginning of the XX-th century [8].

In the USA one of the sensational cases concerning aggressive sexual behaviour of women occurred in summer 2003 when groups of women forced the Chicago men to their full physical exhaustion almost throughout three months [8].

¹ See item 2 of the Decree of Plenum of the Supreme court of the Republic of Uzbekistan № 13 dated 29.10.2010 [7, p. 14].

We have not found out any domestic publications about the facts of female violence over men. However, we believe, we shouldn't hasten with conclusions about absence of similar cases in our country. For "the awkwardness experienced by men who had been raped by women ... results in the fact that there is no information known about such crimes": men, as a rule, prefer not to share their experiences and feelings on this occasion with anybody [8]. Our investigation proves everything mentioned above: if you were asked a question "If you became a victim of sexual violence from a woman, would you address with the corresponding statement to law enforcement bodies?" 996 men of 1 000 interrogated gave a negative answer.

Contrary to presence of a considerable number of the above-stated practical examples the most part of which are of Russian origin, scientists-experts on criminal law of the given country share the opinion according to which "... a woman biologically cannot make sexual intercourse ..." that means, that she cannot be the executor of rape [2, p. 20].

As the sexual intercourse of a man and a woman becomes possible only in case a genital of the man is in erected condition, for a refutation of the above-stated position it is enough to prove, that such condition can be caused by a woman not only in the presence of mutual sexual inclination, but also without it or against the will and desire of the man by application of physical violence to him.

On that purpose let us appeal to medical dictionary. So, according to it erection appears in the result of dilatation of arteries, spasm of veins and relaxation of sinusoid cavernous bodies of penis. Arteries, veins

and sinusoids of cavernous bodies consist of smooth muscles, and the muscles are fabrics-targets for neurotransmitters, assignable at nerves stimulation, super-vising erection. After corresponding sexual stimulation neurotransmitters cause relaxation of smooth muscles of cavernous bodies of penis, expansion of sinusoids and arteries feeding these bodies, and powerful increase in inflow of blood in sinusoids. Then sinusoids are filled with blood, extend and squeeze draining them venules, that causes delay of blood [9].

In other words, erection appears in the result of powerful inflow of blood to genital of the man and delay of its outflow from there.

You must admit that such condition can be created without the natural process caused by a spasm of veins and relaxation of sinusoids: to stimulate sexual man's function, i.e. to cause necessary inflow of blood is possible, for example, by means of special means like Viagra and to block blood outflow, having tied up the sexual body of the man at the bottom. All this makes possible to satisfy woman's sexual passion in the natural form against or without the will of the man.

Therefore, the statement that the woman "... biologically cannot commit sexual intercourse ..." and be the subject of rape, in our opinion, is groundless.

Today, in the countries in which criminal legislation recognizes as "rapists" only males, the specified question is settled in different ways. So, in particular, according to directives of the Plenum of the Supreme court of the Russian Federation violent compulsion of woman towards man to sexual intercourse commission contains corpus delicti of a crime stipulated by

article 132 of Criminal Code of the Russian Federation (commission of violent actions of sexual character) [5; 6, p. 165].

In our opinion, regarding qualification of criminal acts committed by us committed by women towards men the above-stated legal act is more than illegitimate. Item 1 of the above-stated enactment defines quite fairly: "... sexual intercourse commission one should understand as a sexual intercourse between man and woman...". The edition of article 131 of Criminal Code of the Russian Federation violent sexual intercourse is called rape. Having united these both provisions, we will get the following: violent sexual intercourse between a man and a woman is a violent sexual intercourse, that proceeding from operating edition of article 131 of Criminal Code of the Russian Federation is rape. Why in case the initiator of such sexual intercourse is a woman, the crime ceases to be rape and becomes a violent action of sexual character? It is clear, that in such cases in order to achieve sexual affinity from the man, the criminal calls erection making a number of manipulations of sexual character ..., but satisfaction of her sexual need is carried out in the natural way, i.e. by penetration of a genital of the man into her genital.

In our opinion, even more unfair situation connected with definition of persons, bearing responsibility for rape has developed in a number of states of America. In Model Penal Code of the USA the subject of rape is defined not simply as a man, but as the man who is not legally married to the victim (article 213 (1)). In other words, introduction into violent sexual intercourse with his own wife in a number of American states applying

provisions of the above-stated statutory act, is not punishable. Similarly, married women of Serbia are also deprived of sexual freedom [1, p. 139–140].

Let's refuse sharp comments on this occasion, but it reminded familiar to us from history the period of slaveholding system when the slave completely passed into the ownership of the slaveholder who had bought him ...

It would be desirable to notice, that in Uzbekistan, as well as in other CIS countries, for rape of his own spouse heavier punishment is prescribed to the "rapist", that is caused by the raised degree of danger of the crime committed towards the close relation.

Summing up all stated above, we must notice, that the comparative analysis of criminal-legal norms of law, carried out by us, characterizing the subject of rape in the CIS countries (except the Ukraine and Moldova), and also in the states – representatives of the far abroad, such as the USA, Switzerland, Latvia, Serbia, Bulgaria, Japan, etc., gives us the right to conclude, that the criminal legislation of Uzbekistan in the question of definition of the subject of rape is more progressive, for members of parliament of our country made the decision due to firm constitutional rights of a person, and basing on the provisions of modern medicine².

At the same time, both domestic representatives of the doctrine of criminal law [See: 3, p. 191; 4, p. 13, etc.], and 68%

² It is thought, that refusal of legislators of Uzbekistan of specifying the sex of the victim in a disposition of article 118 of the Criminal Code is deliberate (comprehended) and expresses their (legislators') position on possibility of commission of the specified crime by persons of both sexes.

of practical workers interrogated by us³ agreed with the legislators of Uzbekistan.

But the position of Plenum of the Supreme Court of the Republic of Uzbekistan, as it was stated by us before, is considered to be mistaken. Therefore, we propose in item 2 of the Decree “On court practice on affairs of rape and satisfaction of sexual need in an unnatural way”:

- 1) to exclude words «with a female» and “her”;
- 2) after a word “of will” to add a word “of the victim”.

³ For the question “Can a woman be the subject of rape?” 68% of respondents gave a positive answer. Total number of the interrogated respondents – is 31 people / Interrogation was spent with assistance of Higher educational courses of the State Office of Public Prosecutor of the Republic of Uzbekistan.

Besides, taking into consideration the position of the remained 32% of the practical workers interrogated by us not to admit judicial -investigatory errors on affairs of rape, we offer to complete the specified Decree with items 9-1 with the following:

“According to the first part of article 118 of the Criminal Code the subject of a crime is to be recognized a compos-mentis person who has reached the age of 14 and belonging to opposite sex in relation to the victim.

If the sexual intercourse committed without or against the will of the victim, is carried out by the person owing both male, and female sexual features, the qualification of what has been committed under article 118 of the Criminal Code is carried out depending on a sexual role as a bisexual person, so as the victim”.

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