

Rape amongst juveniles: protecting the offender or the victim?

1. Introduction: a case study

Between 2003 and 2007 I worked as a family judge in the Family and Minors Court of Setúbal. Setúbal is an industrial town located about 30 minutes from Lisbon. Despite its proximity to the capital Setúbal has specific sociological, economical and cultural characteristics because its inhabitants are mostly poor and undereducated people who depend upon the local labour market and state funding.

From my point of view, this sociological background helps us to understand the conservative mentality and the rigid patterns this population has regarding moral and sexual behavior which influences the way they face sexual offences as well as the role played both by perpetrators and victims.

I will present you a case that goes back to 2005 which involved a 14 young girl, her boyfriend and four friends of theirs. This case was particularly serious and had a relevant impact in the local community causing great distress and huge discussions among defense lawyers, teachers and social workers.

These are the key notes of the case:

“ X was a 14 year old girl who lived alone with her father after her mother had left the family. She had no brothers or sisters and her father was known as a violent man who used to beat his wife and daughter. He worked the whole day in a local industry and his daughter, after school, used to spend the rest of the day on her own.

She started dating a cousin two years older than she. She used to write him love letters and was very involved with this boy. At a certain point, they started to have sexual intercourse and he convinced her to accept having sex with another boy. This fact came to public knowledge, was commented amongst their friends and, in a few days, the whole school commented the fact. Consequently, the girl got a bad reputation.

One afternoon, the girl and her boyfriend were dating in an old car outside the school when the third element arrived with three more friends. They all had, one after another, sexual intercourse with the girl.

The girl complained to her father saying she had been raped and he went to the police station and presented complaint.

For more than six months no one investigated the case and the file was sent to the family court without any intervention besides the charge made by the girl's father against the boys.

When I first read the file, I decided to interview all the people involved in the case starting with the girl and her father and, afterwards, the boys.

She has always kept her version that a rape had taken place and that she did not want to have sexual intercourse with all the five boys.

On the other hand, the boys said she consented. They were trialed and sentenced to spend 2 years in a Juvenile Detention Center.”

The conviction caused a huge impact in the local community which didn't accept the boy's imprisonment. Somehow, the majority of those who knew the case felt the boys were “victims” of the girl, that they had been unjustly convicted because the girl had a bad moral behavior.

The elements I have just described lead us to the first topic of my presentation: Which are the legal answers of the Portuguese judicial system regarding the victims and sexual offenders?

2. The Portuguese legal system: an overview

Portuguese Family and Minors courts are competent, amongst other competences, to judge and to sentence criminal offences perpetrated by minors (juveniles below the age of 16), as well as, to apply protective measures to minors who are victims of crimes or abuses.

These competences are held both in Lei Tutelar Educativa and in Lei de Promoção e Proteção de Crianças e Jovens em Perigo. The two legal instruments despite having different purposes complement each other and can be seen as the both sides of the same coin.

However, the major difficulties that family judges face when applying these laws is to know the impact of these measures in both victims and offenders. There are no *follow up* studies available in Portugal to help us understanding how law enforcement can potentially change the way these children behave, feel and think about their behavior. There are no resources allocated to family courts and even psychological support to victims and sexual offenders is also lacking.

Consequently, state's intervention is essentially formal and detached from a holistic approach.

Another point I would like to focus is the need to implement a co-working philosophy in a network scenario between judges, police officers, social workers and psychologists.

Judges need to be permanently supported by a team of social workers and psychologists in order to make a critical assessment of the legal instrument's application. Moreover, close relationships between institutional actors facilitates exchanging information, sharing experiences and, ultimately, judicial intervention.

3. The weaknesses of the legal answers

This leads us to the conclusion that family courts are not working on a solid ground. Even if the law is changed these changes must be made in a systemic context and demand a global public policy regarding both victims and offenders.

Consequently, the legal perspective should not only bear in mind its preventive and punitive scope towards the offender but also the recovery of the victims.

Recovering a victim's physical and mental health is as important as recovering a juvenile offender. This case study I have selected showed me that the social integration of the victim, after a sexual offence being perpetrated, is as difficult as the social integration of the offender and, in some social contexts, is even more difficult.

Victims tend to feel ashamed, guilty and socially isolated. In some cases, they refuse to go back to school and have difficulties facing their families, friends and teachers due to social pressure.

Consequently, the legislator should allocate financial, human and institutional resources to family courts in order to allow judges to apply legal instruments in a more effective way.

4. Conclusions

The lessons learned from my empirical and practical experience as a family judge allows me to summon them up in the following topics:

- a) Social, economic and cultural environment interfere with the application of legal instruments;
- b) Conservative local communities difficult the victims' reintegration after the offence;
- c) Family courts in Portugal lack human and institutional resources to apply legal instruments effectively;
- d) There are no *follow up* studies available regarding victims and offenders;
- e) These studies would allow judges to have a clear view of their decision's impact and contribute to improve the intervention of family courts;
- f) A lack of a network culture prevents a more effective approach to the criminal phenomena amongst juveniles.

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