

ABSTRACT

NUJEDAT WEAM Forensic characteristics and basic provisions of the investigation of rape. – Qualification scholarly paper: a manuscript.

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The dissertation is a comprehensive monographic study of the peculiarities of the mechanism of committing rapes, which are reflected in the form of forensic characteristics of these crimes, as well as the peculiarities of their investigation.

On the basis of the analysis of medical, psychological, sociological and forensic literature, the essence of rape is defined as crimes in which the biological and sociological combination is combined. The biological aspect of rape is based on the sexuality of a person, which is the innate need and function of the human body, the program of which is laid down at the level of instinct. The sociological aspect of rape is the appearance of a person beyond the «norm» of modern sexual behavior, which manifests itself in ignoring the free expression of the will of another, the use of violence to meet the sexual need. The objective aspect of rape is manifested in acts of a sexual nature connected with vaginal, anal or oral penetration into the body of another person using genitals or any other subject, without the consent of the victim. Absence of voluntary consent is determined taking into account the accompanying circumstances that could negatively affect the will of the person.

The key factor determining the peculiarities of the mechanism of committing a rape and the subject of evidence is determined by the presence or absence of social communication (dating) between the offender and the victim. Therefore, it is precisely on this factor that the feasibility of forensic classification of rapes has been substantiated for: 1) rape committed by an unfamiliar victim (absence of any social ties); 2) rape committed by a familiar victim. Thus, a basis is created for the development of specific criminological characteristics regarding the classification groups of rape.

It is noted that the forensic description of rape committed by an unknown victim relates to crimes committed through an assault on the victim for the purpose of violent sexual intercourse. It includes: the offender's personality is mainly a young man with marginal traits and pathological manifestations of sexual desire; ways of committing are characterized by expectations, tracing the victim and committing an attack or luring the victim after a short-term acquaintance in a place convenient for attack; the situation of rape is often a deserted area of the area and a dark time of day; material traces of rape – traces of the offender and victim at the place of committing the rape, indicating their presence there, as well as traces of their mutual contact on bodies and clothing, traces of sexual intercourse; the victim is a person - mostly women who have a positive characteristic, but certain victimological subjective attributes may also occur.

The forensic description of rapes committed by a familiar victim relates to crimes committed by a person using existing social ties between him and the victim of violence. It includes: the person of the offender is characterized by increased sexual need for the satisfaction of which the victim from a close environment is used; the ways of committing are characterized by the election of a victim of sexual violence, which will easily be lured into a convenient place, the creation of a situation that excludes the victim's appeal to law enforcement agencies; the situation of rape - often committed in the premises (apartments and houses), usually at the place of residence of the perpetrator or victim, connected with family, marriage, neighboring, marital relations; material traces of rape – traces of biological origin, which allow to establish the fact of sexual intercourse between specific persons and their violent character or use of helpless state of the victim; victim: a person who knew the perpetrator before, but did not have a stable relationship with him; a person who was a perpetrator in a prolonged domestic relationship; a person who was in a long criminal relationship, including intimate relationships.

The peculiarities of the opening of a criminal proceeding concerning rape are determined, which are conditioned by the ambiguity of sexual behavior of both a woman and a man. Therefore, it is expedient to carry out verification actions before

entering the information on violence against the Unified Register of Pre-trial Investigations, which were declared by the victim, and to initiate a pre-trial investigation: obtaining a detailed explanation from the applicant's person; review of the place of the event; receiving explanations from eyewitnesses of certain events that preceded, followed or came after rape. Taking into account the duration of these measures, provided for in Part 1 of Article 214 of the Criminal Procedure Code of Ukraine, the term (24 hours) is often insufficient, but this is not an obstacle to initiating a pre-trial investigation.

The rationale for the investigation of rapes of typical investigative situations is substantiated by the key feature of the existence or absence of certain social relations between the suspect and the victim (correlates with the proposed forensic classification of these crimes): 1) pre-trial investigation commenced in connection with the application for rape by an unknown victim; 2) the pre-trial investigation was initiated in connection with the application for committing a rape by a familiar victim. For each of the above mentioned typical investigative situations, it is typical to carry out certain complexes of investigation and search operations – tactical operations («Investigation and identification of the offender», «Signs of the violent sexual intercourse in the victim», «Signs of sexual intercourse in the suspect», «The nature of relations between the victim and the suspect»).

It is noted that in order to avoid legal errors in investigating rape, especially in the situation when it is committed by a familiar victim, it is important to use versions: 1) rape took place (the victim's statement is true); 2) There was no rape (the application is false). The problem of false statements about rape is largely due to the existence of certain stereotypes in society, which significantly affects the activities of law enforcement agencies. Verification of the false statement of rape must be tactfully carried out – any action taken on suspicion of fabricating a rape application can only be made if that suspicion is caused by sound evidence. It is emphasized that any attempt to cast doubt on the rationale of a rape statement for a real victim may be a severe blow that will surely destroy the trust relationship that exists between the investigator and the victim.

The problem of timely detection and elimination of counteraction to the investigation by the suspect (the nature of the response depends on the existence of a social connection with the victim) and on the part of the victim is analyzed. On the part of the victim, counteraction occurs in cases when they initiate the opening of criminal proceedings by a false statement, deliberately misleading the pre-trial investigation body (reported false or distorted information about the circumstances of the rape). This may be due to the desire to compromise a certain person, to blackmail her with merciless or to hide her obscene behavior. In order to overcome the counteraction, it is important to timely disclose its features and, depending on their nature, to take appropriate measures, for which it is necessary to constantly analyze the information communicated by the participants in the criminal proceedings and their behavior, in the perspective of checking the typical versions.

It is emphasized that the peculiarities of the tactics of separate investigative actions in the investigation of rape are due to the specific mechanism of its commission, which manifests, on the one hand, the satisfaction of the natural sexual needs of man (biological aspect), and, on the other hand, the violation of social rules of sexual behavior (sociological aspect). The above factors influence both the creation of traces of rape and the behavior of participants in criminal proceedings during such investigative actions as inspection, questioning the victim, suspect and witnesses, a search, a presentation for identification, an investigative experiment. A special role in proving the fact of sexual intercourse with the use of violence or helpless state of the victim, are expertise (forensic, forensic psychiatric, complex psycho-psychiatric). In view of the fact that for the purpose of obtaining evidence in the course of these experiments, the study of objects of biological origin is required, preparation for them permeates the content of many investigative actions. This requires compliance with the recommendations for identifying, fixing and extracting the specified objects and determining the circumstances of their formation.

Key words: rape, victim, suspect, investigative situation, object of biological origin, examination.