

VALUE OF THE VICTIM'S TESTIMONY IN SEX CRIMES DECIDED BY THE SÃO PAULO COURT OF JUSTICE

O VALOR DA PALAVRA DA VÍTIMA NOS CRIMES SEXUAIS JULGADOS PELO TRIBUNAL DE JUSTIÇA DO ESTADO DE SÃO PAULO

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DOI: [doi.org/10.54415/rbccrim.v187i187.51].
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Recebido em: 19.07.2021

Aprovado em: 20.09.2021

Última versão da autora: 01.10.2021

ÁREA DO DIREITO: Penal

RESUMO: A legislação a respeito de crimes sexuais mudou de forma significativa nas últimas décadas, em resposta a demandas de maior proteção de mulheres e vítimas. Pesquisas empíricas sobre como os tribunais aplicam as novas leis são escassas e desatualizadas. Nesse artigo, investiguei de que forma o Tribunal de Justiça de São Paulo avalia a prova para decidir pela condenação do réu. Por meio de análise qualitativa e quantitativa de 135 apelações criminais do TJSP, argumento que o Tribunal atribui relevante valor ao depoimento das vítimas, independentemente de seu status ou passado, e que muitas condenações se baseiam exclusivamente no depoimento das vítimas ou de pessoas para quem a vítima contou sobre o crime. Os resultados parecem indicar que os obstáculos enfrentados por vítimas que decidem denunciar crimes sexuais estão centrados, primordialmente, antes da sentença condenatória e não no *standard* probatório utilizado pelos tribunais.

ABSTRACT: Brazilian rape law has changed significantly in the past decades, responding to demands for better protection for women and victims. Research about how Courts interpret the new Statutes is scarce and outdated. In this paper, I investigated how Courts evaluate evidence to determine if a defendant should be convicted of a sexual criminal offense. Through qualitative and quantitative analysis of 135 criminal appeal decisions from the São Paulo State Court of Justice (TJSP), I argue that the Court gives substantial value to the victims' testimony, irrespective of their past, and that many convictions are based only on the victims' testimony and testimony from witnesses with whom they discussed the facts. This indicates that the obstacles faced by victims of sexual crimes who decide to come forward do not lie on the standard of proof set by the Courts.

PALAVRAS-CHAVE: Crimes sexuais – Depoimento da vítima – Pesquisa empírica – Tribunal de Justiça do Estado de São Paulo – Opressão de gênero.

KEYWORDS: Sexual violence crimes – Victim's testimony – Empirical research – São Paulo State Court of Justice – Gender oppression.

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1. INTRODUCTION¹

Brazilian rape law has changed significantly in the past decades, primarily due to two federal statutes that altered the Brazilian criminal code, enacted in 1940. In 2009, Federal Statute No. 12.015 (i) changed the name of the section of the Brazilian Criminal Code that deals with sexual offenses from “crimes against morals” to “crimes against sexual dignity”; (ii) considered “rape” any unwanted sexual engagement through physical force or severe threat, whereas before the Statute, only sexual penetration was considered rape and other types of sexual interactions were considered less serious criminal offenses (“indecent assault”); (iii) created a specific criminal offense for engaging in sexual acts with someone under fourteen (14) years old (“statutory rape”), irrespective of any form of violence, threat or constraint and (iv) increased the severity of the penalty in many of these crimes.

In 2018, Federal Statute No. 13.718 made further changes. It created a new offense called “sexual importuning” to cover cases like that of a man who ejaculates on a woman on a bus, which some judges dismissed due to lack of violence or severe threat required for a rape accusation. Before this change, these acts were considered a misdemeanor. The new legislation also determined that all sex crimes are of mandatory prosecution, irrespective of the willingness of the victim to go forward with the case. And it imposed harsher minimum sentences for rape

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1. I am grateful to Flavia Puschel, Marta Machado, Catarina Barbieri, Ana Côrtes, Tais Penteadó, Livia Buzolin Camila de Jesus Gonçalves, Luciana Ramos, Luisa Piasentini, Victoriana Leonora and participants of the Gender and Law research group at FGV Direito SP for their very helpful comments on an earlier version of this piece. All errors are my own. The research that led to this article was conducted with a scholarship from Bolsa Mario Hnerique Simonsen (FGV) and CAPES.