

ORIGINAL ARTICLE

Victim blaming as collateral damage: professionals on court hearings in cases of rape, assault, and fraud

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Abstract

This study investigates legal professionals' understanding of the attribution of moral guilt to complainants in court hearings, comparing rape, assault, and fraud cases in Sweden. Sixteen semi-structured interviews were conducted with judges, prosecutors, defence lawyers, and complainants' counsels. The findings suggest that while professionals assert that attributions of moral guilt to complainants are rare, complainants may perceive blame due to misinterpretation of legally relevant questions. Undue attribution of moral guilt occasionally occurs, particularly during defence cross-examination. Strategies to mitigate the risk of blame include ensuring that hearings are respectful and fact oriented, addressing victim-blaming issues in professional development courses, and preparing complainants prior to hearings. In our study, the attribution of moral guilt predominantly centred on rape cases, which may be due to historical discourse and sensitivity surrounding sexual assault cases. The study highlights the need for further research into mechanisms of attributing moral guilt to

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complainants and into sources of tension that contribute to negative experiences for complainants.

1 | INTRODUCTION

Experiencing a crime can be deeply distressing. Victims may suffer physical, mental, and financial harm, along with additional consequences. When individuals are held responsible for their actions before the incident or their personal traits, it can lead to secondary victimization. This refers to unfavourable social reactions following the initial victimization, which the affected person views as a further violation of their rights.¹ The fear of blame can discourage victims from reporting offences.² This article explores how blame can be attributed to crime victims – or complainants, as they are termed in legal proceedings.

Since the 1970s, feminist academics have highlighted how moral guilt has been ascribed to complainants in rape cases. This criticism has sparked discussions and increased awareness of victim blaming in society. This heightened awareness has prompted changes in rape legislation, legal definitions, and procedural rules. Paradoxically, however, it may also have made rape victims more reluctant to report incidents to the police. Concerns about victim blaming persist.

To a large extent, criminal procedures are about establishing facts and then interpreting whether certain legal requisites are met. However, court argumentation can be complex, especially in cases of one person's word against another's. Legal professionals often face challenging dilemmas. They must pose questions to build a comprehensive picture of events, but there can be a fine line between legally relevant inquiries and those deemed irrelevant and guilt inducing. This raises questions about how court professionals incorporate existing knowledge about victim blaming into their work.

While discussions about victim blaming have primarily focused on rape cases, victims of other crimes might face similar treatment. For instance, could an assault victim encounter comparable scrutiny regarding their pre-incident behaviour, or have their account questioned due to a delay in reporting the offence? This study aims to investigate legal professionals' experiences and understanding of the attribution of moral guilt in court hearings, comparing its manifestation in rape, assault, and fraud cases.

The study was carried out in Sweden, a country that identifies as having a strong commitment to gender issues and combating violence against women. Assault and fraud were chosen because they provide a contrast to rape in several respects. Both assault and rape are physical crimes, while fraud imposes economic injury. While rape is almost exclusively reported by women, assault mostly affects men, and fraud is more neutral in terms of gender.³ It can also be argued that rape and fraud seem to involve more shame for victims. We suggest that the differences mentioned here

¹ L. Montada, 'Injustice in Harm and Loss' (1994) 7 *Social Justice Research* 5.

² R. Kidd and E. Chayet, 'Why Do Victims Fail to Report? The Psychology of Criminal Victimization' (1984) 1 *J. of Social Issues* 39.

³ According to the Swedish Crime Survey, the annual prevalence of sexual assault by force is 1.2 per cent for women and 0.2 per cent for men. The prevalence of assault is 3.2 per cent for men and 2.2 per cent for women. Sales fraud is reported by 7.4 per cent of men and 6.4 per cent of women: Swedish National Council for Crime Prevention, *Nationella trygghetsundersökningen Rapport 2024 No. 8* [Swedish Crime Survey Report 2024 No. 8] (2024), at <https://bra.se/download/18.1e21615019329787e39813b/1731950546020/2024_Swedish-Crime-Survey-2024.pdf>.

create different expectations for how victims might experience each of the three crimes, as well as for how they will be questioned during police investigations and court hearings. Along the same lines, we suggest that court professionals might have different expectations for how interrogations can impose guilt on complainants and that they may apply different formats for their questioning.

2 | THE ATTRIBUTION OF MORAL GUILT

2.1 | Definition

Given the legal context, two distinct concepts of guilt operate during court proceedings. The first pertains to determining if the defendant committed a crime, ascribing legal guilt. The second concerns moral guilt, attributed to both defendants and complainants, though this article addresses only the latter. When considering the attribution of guilt in court, it is necessary to acknowledge that guilt frequently arises in many situations of misfortune. Individuals may feel guilty for surviving cancer, experiencing a miscarriage, or being robbed. Experiencing guilt can be considered a normal psychological response in such circumstances.⁴ The relationship between professionals' attribution of guilt and complainants' perception of guilt is complex. Guilt can arise without external instigation. Conversely, an individual may remain unaffected by others' guilt-attributing discourse. In this study, we employ 'attribution of moral guilt' to denote that the complainant's behaviour has contributed to the criminal event, based on ethical or moral standards. For variation, 'blaming the complainant' is used with the same meaning.

2.2 | Stereotypes and rape myths

Feminist scholars have shown how stereotypes about gender and sexuality significantly impact the public understanding of rape.⁵ In the literature, these negative stereotypes are often called 'rape myths'.⁶ These myths suggest that a genuine rape victim will exhibit specific post-assault behaviour, display 'appropriate' distress, and report immediately. Victims are expected to act rationally and withdraw quickly. Rape myths also claim that victims invariably physically resist and that rape is not prevalent, only affecting certain women, with false accusations common.⁷ The victim's prior behaviour, relationship with the perpetrator, character, and sexual history are

⁴ I. H. Frieze et al., 'Describing the Crime Victim: Psychological Reactions to Victimization' (1987) 18 *Professional Psychology: Research and Practice* 299.

⁵ See for example S. Ehrlich, 'Rape Victims: The Discourse of Rape Trials' in *The Routledge Handbook of Forensic Linguistics*, eds M. Coulthard et al. (2020, 2nd edn) 297; S. Lees, *Carnal Knowledge: Rape on Trial* (1996).

⁶ M. R. Burt, 'Cultural Myths and Supports for Rape' (1980) 38 *J. of Personality and Social Psychology* 217.

⁷ See for example J. Conaghan and Y. Russell, 'Rape Myths, Law, and Feminist Research: "Myths about Myths"?' (2014) 22 *Feminist Legal Studies* 25; L. Ellison and V. E. Munro, 'A Stranger in the Bushes, or an Elephant in the Room? Critical Reflections upon Received Rape Myth Wisdom in the Context of a Mock Jury Study' (2010) 13 *New Criminal Law Rev.* 781; H. Gerger et al., 'The Acceptance of Modern Myths about Sexual Aggression Scale: Development and Validation in German and English' (2007) 33 *Aggressive Behavior: Official J. of the International Society for Research on Aggression* 422; A. Grubb and E. Turner, 'Attribution of Blame in Rape Cases: A Review of the Impact of Rape Myth Acceptance, Gender Role Conformity and Substance Use on Victim Blaming' (2012) 17 *Aggression and Violent Behavior* 443; K. A. Lonsway and L. F. Fitzgerald, 'Rape Myths: In Review' (1994) 18 *Psychology of Women Q.* 133; M. Randall, 'Sexual Assault Law, Credibility, and "Ideal Victims": Consent, Resistance, and Victim Blaming' (2010) 22 *Cdn J. of Women and the Law* 397.

used to imply consent and discredit the victim.⁸ Research from Sweden and Norway shows that rape myths remain crucial in how victims are constructed.⁹ Professionals in court may be influenced in interrogations and decision making.¹⁰ Studies show that myths about women's attire can affect court assessments, implying that certain clothing indicates a desire for sex and shared culpability.¹¹ However, Helen Reece has argued that the impact and frequency of rape myths are exaggerated, and a static understanding hinders constructive debate in this complex field.¹²

2.3 | The attribution of moral guilt in rape

Jennifer Temkin has elucidated how both defending and prosecuting barristers in England expressed the view that complainants' character could significantly influence case outcomes.¹³ Some barristers held that individuals not perceived as respectable were partially culpable for the incident. All interviewees denied harassing complainants; however, some reported observing such behaviour in others. This approach was generally regarded as counterproductive, yet some barristers indicated that adopting a ruthless demeanour was inherent in defending a client.¹⁴ Jennifer Pierce has referred to 'Rambo litigators', denoting defence lawyers who are excessively severe and combative.¹⁵ Studies from various countries have demonstrated how judges, juries, and mock juries are influenced by similar stereotypes, potentially impacting decision making and the ultimate verdict.¹⁶

Stina Holmberg and Lars Lewenhagen have asserted that introducing a consent criterion in Swedish rape legislation has altered interrogation methods.¹⁷ Defence lawyers believe that procedural fairness has deteriorated after rape law modifications, making it harder to prioritize issues. They argue that the emphasis on consent has led to more detailed and intimate questions.

⁸ M. Bladini et al., "'It Sounds like Lived Experience': On Empathy in Rape Trials' (2023) 72 *International J. of Law, Crime and Justice* 100575; O. Smith and T. Skinner, 'How Rape Myths Are Used and Challenged in Rape and Sexual Assault Trials' (2017) 26 *Social & Legal Studies* 441; J. Temkin et al., 'Different Functions of Rape Myth Use in Court: Findings from a Trial Observation Study' (2018) 13 *Feminist Criminology* 205.

⁹ A. Bitsch, 'The Geography of Rape: Shaming Narratives in Norwegian Rape Cases' (2019) 44 *Signs: J. of Women in Culture and Society* 931; A. Bitsch and M. E. Klemetsen, 'The Legal Grading of Sexual Citizenship: Sentencing Practices in Norwegian Rape Cases' (2017) 24 *Gender, Place & Culture* 174; L. Wallin et al., 'Capricious Credibility: Legal Assessments of Voluntariness in Swedish Negligent Rape Judgements' (2021) 22 *Nordic J. of Criminology* 3.

¹⁰ Temkin et al., op. cit., n. 8.

¹¹ J. Temkin, 'Prosecuting and Defending Rape: Perspectives from the Bar' (2000) 27 *J. of Law and Society* 219.

¹² H. Reece, 'Rape Myths: Is Elite Opinion Right and Popular Opinion Wrong?' (2013) 33 *Oxford J. of Legal Studies* 445.

¹³ Temkin, op. cit., n. 11.

¹⁴ See also C. Gunby and A. Carline, 'The Emotional Particulars of Working on Rape Cases: Doing Dirty Work, Managing Emotional Dirt and Conceptualizing "Tempered Indifference"' (2019) 60 *Brit. J. of Criminology* 343.

¹⁵ J. L. Pierce, *Gender Trials: Emotional Lives in Contemporary Law Firms* (1996).

¹⁶ S. Dinos et al., 'A Systematic Review of Juries' Assessment of Rape Victims: Do Rape Myths Impact on Juror Decision-Making?' (2015) 43 *International J. of Law, Crime and Justice* 36; F. Leverick, 'What Do We Know about Rape Myths and Juror Decision Making?' (2020) 24 *International J. of Evidence & Proof* 255; Wallin et al., op. cit., n. 9.

¹⁷ S. Holmberg and L. Lewenhagen, *Den nya samtyckeslagen i praktiken: En uppföljning av 2018 års förändringar av lagreglerna rörande våldtäkt [The New Consent Law in Practice: A Follow-Up to the 2018 Changes of the Legal Regulations Concerning Rape]* (2020) 6, at <https://bra.se/download/18.47bb43da192711ebb377090/1729748802543/2020_6_Den_nya_samtyckeslagen_i_praktiken.pdf>.

Conversely, Lisa Wallin et al. have observed that reasoning in judgments after implementing the new legislation showed a certain resistance to rape myths not previously evident.¹⁸

2.4 | The attribution of moral guilt in other crimes

Less is known regarding the treatment of complainants in legal proceedings for crimes other than sexual assault. In an experimental study, Steffen Bieneck and Barbara Krahé have observed that victims of robbery are attributed more blame than victims of rape.¹⁹ Interviews with fraud victims indicate that they also experience blame in court, and discourse surrounding victims of online fraud portrays them as greedy²⁰ and gullible.²¹ These perceptions are partially internalized by the victims themselves, who often experience shame and humiliation, sometimes to the extent that they refrain from reporting the crime. In a Swedish vignette study, Kalle Tryggvesson has demonstrated that victims of assault tend to be ascribed more culpability if the violence was less severe and they had consumed alcohol.²² The same applies if the perpetrator can be perceived as having been provoked in some manner by the victim.²³ Cassandra Cross has shown that victims of fraud are perceived as motivated by greed, as gullible for having believed falsehoods, and as culpable for their own victimization, which can be interpreted as a ‘fraud myth’.²⁴ Stuart Waiton has argued that ‘there may indeed be certain myths that some members of the public believe about complainants and defendants, but they are not specific to rape trials’.²⁵ Shalini Nataraj-Hansen has suggested that such fraud myths are predicated on moral neoliberal notions that regard victims as rational agents who possess agency and responsibility.²⁶

In the same project as this study, we interviewed Swedish complainants in cases of rape, assault, and fraud. These complainants felt that they were attributed moral guilt during court hearings, mainly by the defence lawyer.²⁷ Certain complainants in rape cases reported experiencing support from court professionals when they perceived that the defence lawyer was posing

¹⁸ Wallin et al., op. cit., n. 9.

¹⁹ S. Bieneck and B. Krahé, ‘Blaming the Victim and Exonerating the Perpetrator in Cases of Rape and Robbery: Is There a Double Standard?’ (2011) 26 *J. of Interpersonal Violence* 1785.

²⁰ C. Cross, ‘“Nobody’s Holding a Gun to Your Head ...”: Examining Current Discourses Surrounding Victims of Online Fraud’ in *Crime, Justice and Social Democracy: Proceedings of the 2nd International Conference, 2013, Vol. 1*, eds J. Tauri and K. Richards (2013) 25.

²¹ C. Cross, ‘No Laughing Matter: Blaming the Victim of Online Fraud’ (2015) 21 *International Rev. of Victimology* 187.

²² K. Tryggvesson, ‘The Role of Alcohol in the Construction of a “Good” Victim: The Attribution of Blame to Male Victims of Violence’ (2008) 15 *International Rev. of Victimology* 19.

²³ See for example K. Plumm et al., ‘Victim Blame in a Hate Crime Motivated by Sexual Orientation’ (2010) 57 *J. of Homosexuality* 267.

²⁴ C. Cross, ‘Who Is to Blame? Exploring Accountability in Fraud Victimisation’ (2020) 6 *J. of Criminological Research, Policy and Practice* 35.

²⁵ S. Waiton, ‘What Do We Know about “Rape Myth” Research and the Claim that There Is “Overwhelming Evidence” that Juries Are Prejudiced in Rape Trials?’ (2024) 28 *International J. of Evidence & Proof* 154, at 173.

²⁶ S. Nataraj-Hansen, ‘“Should’ve Known Better”: Using Lerner’s Belief in a Just World to Understand How the Fraud Justice Network Observe Victims of Online Romance and Investment Frauds’ (2024) 30 *International Rev. of Victimology* 192.

²⁷ M. Jacobsson, ‘Experience of Guilt in Court Hearings: Comparing Rape, Assault and Fraud Cases’ (2024) 33 *International J. of Social Welfare* 237; H. Gröndahl et al., ‘Resisting Rape Myths and Doing Feminism in Legal Processes of Rape Cases’ (2025) *Social Politics: International Studies in Gender, State & Society*.

questions deemed irrelevant to the case. Moreover, some interviewees in rape cases expressed satisfaction with trial proceedings, even in instances of acquittal, due to their perception that court professionals had believed their accounts and treated them respectfully.

3 | CONTEXTUALIZING THE SWEDISH CASE

3.1 | Victim support and legislation

Since the 1980s, Sweden has focused substantially on crime victims, implementing numerous legislative reforms to enhance victim protection and rights.²⁸ The Social Services Act stipulates that social welfare services shall accord particular attention to and support women subjected to violence.²⁹ Comprehensive policy initiatives have been undertaken regarding men's violence against women (and children), and Sweden is internationally recognized for its commitment to women's rights.³⁰

The most recent 2018 amendment to the Rape Act mandates explicit consent for sexual activities from all parties.³¹ The consent-based legislation aimed to shift social values towards sexual relations. However, it has faced criticism regarding the interpretation and application of consent. The legal definition of consent as voluntary participation is challenging to assess, as coercion can occur.³² Additionally, the law has been critiqued from a feminist legal perspective for its 'male rationale' and patriarchal ideologies.³³

Regarding legislation on assault and fraud, no significant amendments have been enacted recently. Assault is a serious violent offence, with male complainants more prevalent than in rape. The court must ascertain whether the defendant caused the victim bodily harm, illness, pain, or discomfort. A common consideration is whether the defendant acted in self-defence, allowing the defence lawyer to portray the complainant as threatening. Fraud is an offence in which one individual deceives another through falsehood or omission, resulting in gains for the perpetrator and detriment to the victim. Courts may evaluate whether the complainant has been defrauded or merely regrets a financial commitment.

3.2 | Professionals in court

The Swedish legal system incorporates both inquisitorial and adversarial approaches. The preliminary investigation, supervised by the prosecutor, is mainly inquisitorial, whereas an

²⁸ H. Tham et al., 'The Emergence of the Crime Victim: Sweden in a Scandinavian Context' (2011) 40 *Crime and Justice* 555.

²⁹ Social Services Act, Swedish Code of Statutes (SFS) 2001:453.

³⁰ Holmberg and Lewenhagen, op. cit., n. 17, p. 6; K. Schwab et al., *The Global Gender Gap Report 2017* (2017), at <<https://www.weforum.org/publications/the-global-gender-gap-report-2017/>>; Tham et al., op. cit., n. 28.

³¹ Penal Code SFS 1962:700; Gov. Bill. 2017/18:177; SFS 2018:618.

³² S. Ehrlich, *Representing Rape: Language and Sexual Consent* (2003); P. M. Tiersma, 'The Language of Consent in Rape Law' in *The Language of Sexual Crime*, ed. J. Cotterill (2007) 83.

³³ M. Bladini and W. S. Andersson, 'Swedish Rape Legislation from Use of Force to Voluntariness: Critical Reflections from an Everyday Life Perspective' (2020) 8 *Bergen J. of Criminal Law & Criminal Justice* 31.

adversarial model is adopted in subsequent court proceedings. The system is based on orality³⁴ and immediacy,³⁵ requiring oral presentation of all evidence during court proceedings.³⁶

Unlike many nations, Sweden does not use a jury system. Criminal proceedings are adjudicated by one professional judge and three lay judges. The professional judge chairs the hearing.³⁷ Lay judges are generally passive during the hearing, participating only in private deliberation.³⁸ Judges and prosecutors in Sweden undergo similar education and training,³⁹ fostering a shared understanding of the legal system.⁴⁰ The court ritual is informal, with professionals maintaining a conducive atmosphere and preparing complainants and defendants. Witness interrogation is respectful and non-confrontational.

Prosecutors conduct preliminary investigations and decide whether to initiate legal proceedings. Their role includes presenting evidence impartially and disclosing exculpatory evidence benefitting the defendant.⁴¹ Though seen as counterparts to defence lawyers, prosecutors are bound by objectivity and responsibility towards the defendant. In a Swedish study, prosecutors described their work as technical and governed by legal rules.⁴² The defendant is entitled to legal representation, typically a court-appointed defence lawyer.

A complainant's counsel should always be appointed on the initiation of the preliminary investigation in cases involving sexual offences.⁴³ It is possible to appoint a complainant's counsel in other case types, provided the complainant has a compelling need. The complainant's counsel has extensive procedural rights throughout the investigation and trial, including the right to appeal and challenge proceedings. They can attend all questioning, hearings, and trial activities, pose questions to parties and witnesses, and deliver their own closing argument. The role includes submitting the victim's compensation claim, which in Sweden is addressed during the criminal trial rather than in a separate civil trial.⁴⁴ Preparing the complainant for police interrogations and court hearings is a crucial aspect of the counsel's responsibilities. This involves explaining that sensitive questions may be asked to ascertain relevant facts, which should not be seen as distrust. The counsel's role also includes providing emotional support to the complainant.⁴⁵

³⁴ Code of Procedure 46, ch. 5 §.

³⁵ Code of Procedure 30, ch. 2 §.

³⁶ In criminal cases of public prosecution, orality is the main principle, but written evidence can be presented when it is relevant.

³⁷ Code of Procedure, ch. 46.

³⁸ L. Dahlberg, 'Emotional Tropes in the Courtroom: On Representation of Affect and Emotion in Legal Court Proceedings' (2009) 3 *Law and Humanities* 175.

³⁹ Prosecutors' and judges' careers look different after completing their judicial qualification, following divergent paths for two years after the bachelor's degree in jurisprudence. In the Anglo-American system, there is greater proximity between lawyers, prosecutors, and judges.

⁴⁰ P. Asp, 'The Prosecutor in Swedish Law' (2012) 41 *Crime and Justice* 141.

⁴¹ Swedish Code of Judicial Procedure (SCJP) 1942:740.

⁴² Bladini et al., op. cit., n. 8.

⁴³ Swedish Act on Complainants' Councils 1988:609, § 1, p. 1.

⁴⁴ See for example C. P. Carroll, 'The "Lottery" of Rape Reporting: Secondary Victimization and Swedish Criminal Justice Professionals' (2021) 22 *Nordic J. of Criminology* 23.

⁴⁵ See for example Bladini et al., op. cit., n. 8; C. Carroll, 'Accessing Rights and Mitigating Revictimization: The Role of the Victim's Legal Counsel in the Swedish Criminal Justice System' (2022) 28 *Violence Against Women* 255.

Ideally, the court process is objective, with legal professionals expected to remain impartial, setting aside emotions and personal values. However, empirical studies show that emotions significantly influence court proceedings in Sweden.⁴⁶ Emotions and values can vary according to sexual activities and situations, depending, for instance, on age, gender, or class. To legal professionals, this variation presents a challenge in how they interact with different complainants.

4 | STUDY DESIGN AND METHOD

The interviews for this study were conducted within a larger project between 2019 and 2021, analysing ten cases each of rape, assault, and fraud.⁴⁷ An equal distribution of convicting and acquitting verdicts in each case type was selected. In addition to audio recordings from interrogations during hearings, all complainants were interviewed. The analysis presented here is based on 16 interviews with court professionals, comprising four representatives from each of these judicial roles: judges, prosecutors, defence lawyers, and complainants' counsels. The sampling of interviewees with diverse judicial roles aimed to achieve variation in the data. However, the sample for each category was too limited in size to permit systematic comparative analysis.

The majority of the interviewees possessed extensive experience, often from diverse roles and various types of criminal cases. Of the 16 interviewees, 14 had more than ten years of work experience, with five having over 20 years and three exceeding 30 years. In Sweden, legal practitioners typically undertake assignments as both defence lawyers and complainants' counsels, which was the case for most lawyers in this study. All but one prosecutor had been involved in one of the 30 cases. All interviewed complainants' counsels had experience of rape cases, with two also having undertaken assignments in assault cases.

Interviews were semi-structured, conducted by telephone and audio recorded. Questions focused on experiences and opinions about the attribution of moral guilt to complainants. The respondents were encouraged to reflect on the differences between crime types. We inquired about their understanding of attributions of moral guilt in hearings generally, and about the specific case in which they had been involved. The interviews were transcribed verbatim to allow directed content analysis.⁴⁸ Data were imported into NVivo, a software program for managing and analysing qualitative data.

The directed content analysis incorporated inductive and deductive elements. Researchers independently listened to the interviews, read the transcriptions, and coded the material. Codes were generated and discussed collectively. Initial coding was influenced by insights from the extant literature, with themes aligning with or contradicting previous research. Virginia Braun and Victoria Clarke posit that researchers should engage in reflexive consideration throughout the analytic process.⁴⁹ For us, analysis was an iterative process where we revisited interviews to

⁴⁶ Dahlberg, op. cit., n. 38; T. A. Maroney, 'The Persistent Cultural Script of Judicial Dispassion' (2011) 99 *California Law Rev.* 629.

⁴⁷ This study was funded by the Swedish Research Council for Health, Working Life and Welfare (Grant/Award Number 2017/00760). It was conducted in accordance with ethical guidelines and national law, and was approved by the Regional Ethics Review Board (No. 2018/218).

⁴⁸ H.-F. Hsieh and S. E. Shannon, 'Three Approaches to Qualitative Content Analysis' (2005) 15 *Qualitative Health Research* 1277.

⁴⁹ V. Braun and V. Clarke, 'One Size Fits All? What Counts as Quality Practice in (Reflexive) Thematic Analysis?' (2021) 18 *Qualitative Research in Psychology* 328.

ensure that emerging themes represented the data. Some themes were consolidated, resulting in four main themes, presented in sub-sections within the findings section. Research questions and theoretical foundations were then juxtaposed with codes and excerpts. The excerpts presented here exemplify the themes.

5 | FINDINGS

Not surprisingly, the interviewees initially asserted that moral guilt is not attributed to complainants in court. However, contradictions emerged when they discussed how complainants are treated more specifically. On the one hand, the interviewees maintained that complainants are never blamed for a crime; on the other, they described scenarios in which complainants might be deemed morally guilty. Discussions regarding the attribution of moral guilt predominantly centred on rape cases rather than assault or fraud cases.

5.1 | Attributing moral guilt belongs to the past

A prevalent perception among most of the interviewees was that problematic attributions of moral guilt occurred historically but are rare nowadays:

I find that it was more commonly occurring in the past, that you asked a lot of questions that perhaps made the complainant feel shame and guilt: ‘How were you dressed?’, ‘How do you usually behave?’, and things like that – things that didn’t have to do with the issue at hand [...] That led to criticism of defence lawyers, so you had to go about a bit more cautiously. After all, these were individuals who had been subjected to something, and in most cases there was no reason to question the actual event or if the complainant had been complicit in this or not. So, there was a change [...] [N]ow they have their own counsel for support – that didn’t exist when I started working a long time ago. (Defence Lawyer 2)

This defence lawyer argued that debates about victim blaming in court hearings have shifted the approach to the cross-examination of complainants. This was addressed by other respondents as well. One complainant’s counsel described it as ‘an issue that has been raised within the judicial system: how to act respectfully, and so on’ (Complainant’s Counsel 4).

Two factors were identified as altering social perceptions regarding the portrayal and treatment of women, both within the judicial system (particularly in rape cases) and in broader society. One significant factor was the recent amendments to sexual crime legislation⁵⁰ that emphasize consent in sexual assault cases.⁵¹ The other raised was the #MeToo movement and the subsequent debate. One participant in the study further asserted that the modifications in courtroom practices have evolved gradually over an extended period, predating the aforementioned events (Prosecutor 2).

⁵⁰ SFS 2018:618.

⁵¹ Holmberg and Lewenhagen, op. cit., n. 17, p. 6.

5.2 | Legally relevant questions might be perceived as attributing moral guilt

The respondents maintained that complainants are rarely ascribed moral guilt during proceedings but acknowledged that complainants might *feel* blamed. This was seen as an unavoidable consequence of legal procedures. The fundamental legal principles of a two-party process, such as presumption of innocence and reasonable doubt, require defence lawyers to pose questions and act in ways that complainants could interpret as scepticism. One judge elucidated:

The judge has to allow some questions because the defence lawyer has a certain right to check if the complainant is credible and reliable. You have to allow certain questions; you can't say in advance that we have one crime victim and one perpetrator. It's the presumption of innocence and so on. You have to show that when you talk to the complainant as a judge, 'I haven't taken a position yet, I'm impartial' [...] After all, there is a person sitting there who may be sentenced to prison. It is clear that you must have the right to proper defence and to question information from the complainant as well [...] We can't care more about one of them. Even if you sometimes might want so, we have our duty to be objective. Maybe you put on sort of a stony face and that can maybe feel a little uncomfortable [for the complainant]. (Judge 1)

This judge addressed emotional work in the courtroom, exemplified by the adoption of a stoic demeanour to demonstrate neutrality. While this is intended to signal objectivity, a complainant might interpret it as favouring the defendant.

The interviewees asserted that challenging and sensitive questions must be raised with complainants, if legally relevant for the case:

Overall, I find that the questions are still of relevance, that people – and it's mostly the defence lawyer who asks these kinds of questions – are trying not to attribute guilt, in that specific role that they have. But then you have to ask these relevant questions [...] There is some kind of limit to it, of course. You have to, and this is due to the rule of law, and that is more important than ensuring that the victim does not experience guilt or shame. (Complainant's Counsel 3)

Like this complainant's counsel, the interviewees generally believed that most questions directed at complainants are in fact legally relevant and that there is no way around asking questions that might come off as insinuating moral guilt. To investigate legal guilt, professionals must ask questions that may be challenging or perceived as offensive by the complainant.⁵² Nevertheless, the demarcation between relevant and irrelevant information is not clearly defined. One interviewee reported that defence lawyers occasionally pose questions that approach the threshold of acceptability, yet constitute an integral aspect of their professional duties, because their role entails critically examining complainants' narratives (Defence Lawyer 4).

Despite potential perceptions of victim blaming, one complainant's counsel maintained that questions about attire may possess legal relevance in rape cases:

⁵² See for example L. G. Calhoun et al., 'Social Perception of the Victim's Causal Role in Rape: An Exploratory Examination of Four Factors' (1976) 29 *Human Relations* 517.

It's not to condemn the choice of clothing or someone's taste. It's because it could be different offences if you, for example, have touched someone with their clothes on or off. Like, what physical opportunities were there to get inside the pants? It might depend on what kind of pants they were. But those questions can be perceived as slightly offensive, or shaming. But it depends a lot on how often they are asked [...] It's always important to consider how questions are asked and that they aren't offensive without any purpose. Such questions aren't allowed. (Complainant's Counsel 4)

Similarly, one prosecutor recounted a fraud case in which the line of questioning might have inadvertently led the complainant to feel guilty about the incident, despite its legal relevance:

There weren't any loan documents that they had drawn up between them. The defendant had been trusted [by the complainant]. In a case like that, it's quite important to ensure that it wasn't considered a gift and to ask questions about that. And I can imagine that being perceived as attributing guilt, that you have some kind of liability there. (Prosecutor 3)

This excerpt further demonstrates that the perception of blame is not solely elicited when the complainant's actions are scrutinized. Even inquiries intended to establish the defendant's culpability may engender this unintended consequence.

It is sometimes assumed that victim blaming can occur as a defence strategy, with the idea that besmirching the complainant could cast the defendant in a better light.⁵³ However, one complainant's counsel, who had previously served as a defence lawyer, contended that it is in the defence lawyer's interest to maintain decorum during cross-examination and to refrain from excessive aggression:

You want to get as many answers as possible from the complainant, and for that purpose it is rarely a good strategy to make the complainant think you are an asshole [...] If there is a really sad and scared person who claims to have been subjected to serious abuse, it's not a very good strategy, if you are to defend someone, to antagonize the whole court by acting in a bad way towards the complainant. I think you just need to have some feeling for 'How do I treat this person to make them answer my questions without antagonizing them or the court?' (Complainant's Counsel 2)

However, one defence lawyer raised a different issue concerning attributing moral guilt to complainants. The lawyer contended that if professionals excessively focus on protecting complainants, there is a risk that innocent defendants may be erroneously convicted:

The environment is not judgemental in that way but rather tells the complainant that 'You are not at fault in this – you are a victim and you should not feel guilty' [...] I sometimes find that the defendant almost has a burden of proof to claim their innocence. And I don't think it is right [...] I believe that the person making the claim should have the full burden of proof for it. (Defence Lawyer 2)

⁵³ See for example Gunby and Carline, *op. cit.*, n. 14.

This defence lawyer argued that awareness of the risk of attributing moral guilt might engender excessive caution among legal professionals when challenging complainants' testimonies. He elucidated how the burden of proof can potentially be inverted. Apprehensions regarding victim blaming may inadvertently foster an implicit presumption of moral guilt concerning the defendant. He stated that some complainants in rape cases fabricate accounts, reporting it as rape due to shame regarding their behaviour. Additionally, he suggested that financial motivations could potentially lead to reporting rape. Such assertions may be interpreted as manifestations of rape myths. However, to the extent that these motives are deemed plausible, cross-examination pertaining to these aspects may be considered legally relevant.

The questions necessary to examine a case might vary between crime types. Most of the interviewees suggested that complainants in rape and fraud cases are attributed greater moral guilt than victims in assault cases. The interviewees had experience of all categories of cases around which our questions were structured. All participants except one agreed that this issue is most prevalent in rape trials.

In conclusion, the interviewees held a strong conviction that the attribution of moral guilt can be avoided if court discourse remains within legal relevance bounds. They emphasized that topics often seen as accusatory may constitute legitimate subjects for discussion. Furthermore, beyond the subject matter, the number of inquiries could also contribute to perceptions of moral culpability.

5.3 | Occasional attributions of moral guilt

Notwithstanding the view that blaming complainants is rare, the interviewees did recognize problematic exceptions. Many believed that most attribution of moral guilt occurs outside the courtroom, during police investigations or in complainants' social circles. Some reported observing others occasionally ascribing moral guilt to complainants during hearings, though they themselves refrained. This typically occurred when defence lawyers were scrutinizing the complainant's testimony.⁵⁴ One judge provided an example from a rape case:

It might absolutely have been perceived as such [attribution of moral guilt] by a young woman who is being questioned: 'Why did you report to the police after such a long time? And why did you say that then? And why did you stay there?', and so on [...] There were a great number of questions about her actions in the time before the event, and about how she had put her hand on his thigh when they had been at some place. There was a great deal of focus on her behaviour, no doubt. The line of defence was that she had shown interest in him and then what was he supposed to think? [...] So, the line of the defence lawyer was that she had somehow led him into this. (Judge 1)

This excerpt raises several themes recognized as rape myths. First, it implies that the complainant's delay in reporting indicated that no inappropriate conduct occurred. Second, it suggests that the complainant allegedly placing her hand on the defendant's thigh signalled readiness for sexual intercourse, which a man might be presumed incapable of resisting. It appears that the complainant's behaviour before, during, and after the event could be used to attribute blame to her.

⁵⁴ See for example Temkin, op. cit., n. 11.

In addition to the sensitive nature of sexual assault cases, the interviewees indicated that inquiries about specific details and sexual experiences irrelevant to the case are occasionally posed:

A very inappropriate question from the defence lawyer that featured in another rape case: ‘Do you usually engage in anal intercourse?’, or something like that. That is also a very uncomfortable question for a complainant to answer in court when she has been raped like that. And I don’t know how that is significant. A question like that! Well, is her whole life supposed to be scrutinized? That’s not what this case is about. But it could also feel very unpleasant [...] and the cases where I think the biggest violations occur is in the sexual assault cases, I find. (Prosecutor 1)

This interviewee asserted that inquiring about the complainant’s previous experience of anal intercourse was inappropriate. He observed that the question did not appear legally relevant in this case, and notably that it was ‘in itself’ problematic, irrespective of legal relevance. He argued that it was not appropriate to interrogate the complainant’s ‘whole life’. This interviewee seemed to suggest that there is a threshold of inappropriate content that should not be transgressed, regardless of legal relevance.

One prosecutor expressed a similar ambiguity in describing a case that he deemed problematic:

She was quite heavily interrogated in that hearing [...] Her story was challenged by the defence lawyer in a way I didn’t find appropriate. Yes, for the defence lawyer’s part, they came on pretty strong about the fact that she didn’t report what happened right away, because they wondered why she stayed in that [vulnerable] situation and why she didn’t do anything about this [...] The defence lawyer had a very hard time believing it, as it were. (Prosecutor 1)

This prosecutor observed that the complainant had a ‘different experience’ of the events. This may suggest that it was legally relevant to examine the divergent accounts to investigate what happened. However, the prosecutor noted that the complainant was ‘heavily interrogated’, and the defence lawyer adopted a particularly confrontational approach. Here, the prosecutor took issue with the manner of questioning, without commenting on relevance.

As demonstrated, most interviewees’ examples of undue attributions of moral guilt pertained to cross-examinations of complainants. Furthermore, some participants noted that complainants can be subjected to blame in closing statements:

[T]he closing statement is the whole, like, finale, where you put forward the entire structure [...] and, of course, there can be a certain amount of guilt attribution in there. You do try, though, according to your own liking, and what you have to work with, to not attribute guilt. But of course, there might be a hint of ‘They had a relationship, they went home ...’ So there might be some [attribution of guilt] there, absolutely. (Complainant’s Counsel 3)

One defence lawyer raised another aspect of closing statements:

There has emerged an even more – how to put it? – serious and professional demeanour from all parties in relation to the complainant, I would say. But then those

changes are not really about how to treat the complainant and what questions to ask. It's more about the legal assessment and the burden of proof and such. I rather feel that it might have influenced how you perform your closing statement and your legal arguments rather than what questions you ask. (Defence Lawyer 4)

It is uncommon for opposing counsel to intervene during closing statements, and judges are also unlikely to do so, particularly compared to cross-examination. This presents an opportunity to explore the boundaries of permissible rhetoric regarding the attribution of moral guilt to the complainant.

While most examples cited by the interviewees pertained to rape cases, one defence lawyer posited that complainants in fraud cases are subjected to even greater blame attribution than those in rape cases. The lawyer contended that these complainants receive less sympathy, with a perception that they bear responsibility for their circumstances:

The court might not have the same – how to put it? – sympathy for them [fraud victims] as they have with for example victims of assault or rape, those who have been subjected to crimes of violence or sexual assault. Perhaps it is – well, it's just a feeling you get sometimes, you can feel like they have themselves to blame, that they have been gullible or something. But, really, it's just a feeling that you might get – it doesn't show in the questions asked or in what is said in the hearing. It's a difference, as I said, from these sexual assault cases, where you are more inclined to ask if they need a break, and that's not something I have experienced much in fraud cases. (Defence Lawyer 4)

In conclusion, the interviewees acknowledged that complainants are occasionally attributed moral guilt, particularly in rape cases and during defence cross-examination. All participants recounted instances of such occurrences, typically referring to other professionals rather than themselves.

5.4 | Strategies to avoid attributing moral guilt

All interviewees acknowledged the necessity of recognizing complainants' potential to experience blame in court. One complainant's counsel explained that judiciary members, the Prosecutor's Office, and legal practitioners undertake training on effective communication with laypersons in court proceedings. These matters are extensively discussed within relevant professions, constituting an integral component of ethical guidelines. One judicial officer described how her education and professional development included instruction on phenomena such as 'frozen fright', a response that may occur when an individual is subjected to criminal activity, particularly in sexual assault cases.

Several strategies to mitigate the risk of attributing blame to complainants were identified. A fundamental factor was adherence to proper legal procedures, particularly to confining discussions within the domain of legal relevance. This is reflected in the emphasis on structuring the hearing to maintain objectivity and factuality:

What I can say is that the judge is very clear about process management. You aren't permitted to roll your eyes or make any kind of gesture or expression and you are not

permitted to phrase things in any way you like. You need to be silent when someone else is talking – you get your say when it's your turn to speak. (Complainant's Counsel 2)

In the same vein, the interviewees emphasized their desire to treat everyone professionally, with respect and compassion:

Most people who work in criminal courts know what it is all about, and you try to make it as good as possible for everyone involved. There should be peace and quiet in the courtroom – no one gains anything by someone having huge emotional outbursts and things like that. But you also have an understanding that this can happen, and if so, you can take a break. (Complainant's Counsel 1)

The majority of the interviewees reported being cognizant of complainants' state of mind and providing emotional support, particularly in sexual assault cases. Efforts to ensure complainants' comfort extended to pre-hearing, intermission, and post-hearing periods. One judge recounted an instance in which the complainant arrived in a state of anxiety and respiratory distress for the hearing (Judge 4). The judge advised her to engage in deep breathing, assuring her that the situation would resolve satisfactorily. Subsequently, the complainant's demeanour improved, and the hearing proceeded with minimal stress.

Ensuring complainants' security and preparing them for the hearing was significant to both complainants' counsels and prosecutors. One complainant's counsel described positioning herself between the complainant and the defendant in rape cases to ensure that her client does not feel vulnerable (Complainant's Counsel 3). She stated that 'the courtroom is my arena to help these girls to find their way back to themselves'. Another complainant's counsel explained that his role includes a therapeutic component, especially in rape cases, providing support and encouragement for the complainant to focus on their strengths and future prospects:

You just have to repeat this: that it's not their fault, it's really not OK. No matter what you say or do, you are never allowed to resort to violence. And then I try to recommend that the complainant seeks professional help from a psychologist or a therapist or something. Because I don't have the competence for that kind of conversation. (Complainant's Counsel 4)

Prosecutors also reported actively engaging in preparing complainants for potential stressors associated with court proceedings during the preliminary investigation:

I always try to check before how they are feeling and explain that I might ask some questions that will be uncomfortable to answer. But I try to explain why I do this. And then check in after, especially if it's the kind of case that can be sensitive. And if there has been an indication from the complainant's counsel that the complainant is feeling bad – well, I find this difficult. (Prosecutor 3)

The interviewees proposed approaches to make the process less challenging for complainants during hearings, specifically regarding interaction and discourse. One judge explained that it is his duty to ensure that questions are respectful and not unnecessarily confrontational or insinuating

(Judge 1). Similarly, one complainant's counsel expressed that she has a responsibility to admonish the defence lawyer if questions exceed appropriate boundaries:

Offensive questions that don't have any purpose whatsoever – they can't be asked. There are provisions in the procedural code about that. Questions that only are, like, intended to belittle the complainant or someone else. You are not allowed to deliberately ask confusing questions either. So that is something you can challenge, as a counsel at a hearing. (Complainant's Counsel 4)

One defence lawyer acknowledged that during his cross-examination he is attuned to the possibility of objections from others: 'It's rather difficult as a defence lawyer to interrogate the complainant, and you easily get reprimanded by the members of the court' (Defence Lawyer 1).

As evidenced in the excerpt from Prosecutor 3 above, meta-communication can be employed to acknowledge the potentially challenging nature of a question. This strategy was also noted by several defence lawyers:

You simply explain your role to the complainant before you start asking questions: 'It's like this, that I represent ... And this means I might have to ask some questions that you will find uncomfortable' [...] It's more about explaining why, and simply avoid attributing shame or guilt and more: 'I need to ask these kinds of questions because ...' or 'He said that ... What do you think about that?' (Defence Lawyer 1)

Both prosecutors and complainants' counsels may anticipate sensitive questions from the defence lawyer and reduce tension by addressing them proactively. Coming from someone arguing the culpability of the defendant, such questions could be perceived as less guilt imposing by the complainant:

Those [the difficult questions] you try to ask yourself, as it feels more comfortable for the complainant to answer questions from someone who you feel is sort of on your side and doesn't have a hostile attitude towards you [...] You know the question will be asked anyway and prevention is better than cure, that they get to tell it there. So, they get to answer as few questions as possible from the defence lawyer. (Prosecutor 1)

Professionals employ several strategies to ensure that hearings are conducted with respect for complainants. Despite these efforts, circumstances may still arise that could be perceived as imposing guilt. Despite measures to avoid blame attribution, the interviewees indicated areas requiring improvement. One complainant's counsel articulated this perspective as follows:

I think that there is surely a lot to do and a lot to work on, but I still believe that we are on the right track. It feels like it – that we are trying. But if you ask them [the complainants], there is probably a lot of improvement to do. (Complainant's Counsel 3)

In conclusion, court professionals addressed factors that contribute to minimizing blame attribution to complainants. They reported participating in training courses and discussing victim blaming with colleagues. They demonstrated awareness of characteristics associated with rape

cases, such as rape myths and frozen fright. The interviewees noted how they prepare complainants for challenging questions and provide emotional support. Additionally, they explained how provocative questions could be legally relevant.

6 | DISCUSSION

6.1 | Overall findings

Researchers have long highlighted structural inequities in the judicial system and how crime victims may be ascribed moral guilt.⁵⁵ Our objective has been to contribute to this research by examining the court context, interviewing court professionals in various roles to ascertain their perspectives on how complainants might be attributed blame in different categories of criminal offences.

Overall, the interviewees asserted that attributions of moral guilt to complainants are rare. This practice was more prevalent in the past but has diminished as court professionals have become cognizant of the phenomenon. Nonetheless, complainants may perceive that they are being blamed, primarily stemming from misinterpretation of questions that appear accusatory but are relevant to determining the defendant's culpability. Consequently, complainants inadvertently become collateral damage in what professionals consider a fair legal proceeding.

According to the interviewees, undue attribution of moral guilt to complainants does occasionally occur. This phenomenon is observed in various contexts, particularly during defence cross-examination, but also in closing arguments. The interviewees posited that asking necessary questions during cross-examination without implying complainant responsibility for the incident may present challenges. Court professionals employ strategies to mitigate the risk of victim blaming. The interviewees emphasized the importance of conducting structured, respectful, objective, and fact-oriented hearings. Victim-blaming issues are addressed in professional development courses and ethical discussions. Professionals exercise caution in preparing complainants prior to hearings and remain cognizant that questions directed at complainants carry legal significance. Judges and complainants' counsels are prepared to intervene if defence cross-examination exceeds acceptable boundaries.

These findings represent a seemingly favourable situation: is blame attribution to complainants in court less problematic than the extant literature suggests? The possibility that professionals fail to recognize all instances of guilt attribution cannot be discounted. They may have presented a more positive perspective in the interview context.⁵⁶ Nevertheless, their demonstrated reflexivity and ability to identify problematic behaviours suggests that their estimates reflect the true situation. Our research also observed some complainants expressing satisfaction with their treatment by professionals during court proceedings.⁵⁷

Among professionals, there is a perception that legal procedures involve 'collateral damage'; complainants experience a sense of blame even if not blamed in reality. The solution that professionals employ is meta-communication. It is crucial to discuss with complainants the topics addressed in hearings, before and after proceedings. In the Swedish system, the complainant's

⁵⁵ See for example S. Estrich, *Real Rape* (1987); N. Gavey, *Just Sex? The Cultural Scaffolding of Rape* (2005); E. Daly, *Rape, Gender and Class: Intersections in Courtroom Narratives* (2022).

⁵⁶ L. Empson, 'Elite Interviewing in Professional Organizations' (2018) 5 *J. of Professions and Organization* 58.

⁵⁷ Jacobsson, *op. cit.*, n. 27.

counsel can play a significant role, particularly in rape cases. However, that level of support is not available to the same extent for other complainants who – as in fraud hearings – may be subjected to blame attribution.

The risk of being attributed with moral guilt is not the only factor that makes court hearings taxing for complainants. Most criminal offences generate traumatic memories and may erode trust. Some crimes – such as rape and, to a lesser extent, fraud – require complainants to disclose sensitive information to the court. Reflecting on our interviews, we find it challenging to precisely identify when the interviewees discussed the attribution of moral guilt versus other stressors. Is questioning about undergarments problematic due to legal irrelevance or integrity violation? In practice, this distinction can be indiscernible, possibly explaining ambiguity in the interviewees' reflections. We posit that future advancements in this field would benefit from further delineating the different types of stress that complainants face. Otherwise, excessive effort may be directed towards preventing the attribution of moral guilt even though this is not the primary reason why complainants (particularly in rape cases) find hearings arduous. Both conceptual development and empirical investigation are needed to advance this discussion.

6.2 | Differences between rape, assault, and fraud

The interviewees had experience of all categories of cases around which our questions were structured. A notable pattern emerged wherein reflections on the attribution of moral guilt predominantly centred on rape cases, which was also the primary source of examples provided. All participants except one agreed that this issue is most prevalent in rape hearings. Several respondents noted that these issues also manifest in fraud cases. Despite prompting during interviews, not a single respondent mentioned attributions of moral guilt in assault hearings. While not unexpected, we advise caution against concluding that problems regarding the attribution of moral guilt are predominantly confined to rape.

Several interviewees maintained that complainant blaming in rape hearings may be attributed to evidentiary circumstances. Such incidents often occur with only two parties present, both acknowledging a sexual encounter but providing divergent accounts. By contrast, fraud cases often yield tangible evidence, such as financial records or digital communication trails. Assault cases frequently involve witnesses, and victims typically present physical injuries. While sexual activity is generally considered normative and pleasurable, physical violence is not. Consequently, rape prosecutions tend to rely heavily on the complainant's testimony, necessitating heightened scrutiny of their account by the defence lawyer and creating a need for rebuttal.

Most interviewees asserted that sexual assault cases are particularly sensitive, as complainants are often asked to disclose intimate details, potentially leading to a perception of questions as intrusive and violating personal boundaries. Though not mentioned by our respondents, financial matters in fraud cases may also be perceived as sensitive. Portraying the complainant and their actions in a morally questionable light may effectively instil reasonable doubt in judges. As the interviewees indicated, there appears to be a genuine dilemma in posing questions that challenge the complainant's narrative and raise distressing issues, while avoiding the perception of victim blaming.

The three types of crime examined exhibit distinct gender patterns, with victimology research indicating differences between how men and women are constructed as victims. Most rape complainants are female, while assault complainants are more likely male, with fraud cases showing a relatively even distribution. Several interpretations can be considered for why the interviewees

observed victim blaming predominantly in rape cases. First, the legal system may perpetuate social prejudice and discriminate against women by attributing blame to rape complainants. Second, female complainants in rape may be more inclined to perceive blame, potentially due to existing debates about victim blaming providing interpretive resources. Third, inherent aspects of rape trials may make it challenging for court professionals to avoid raising issues perceived as blaming complainants, regardless of caution exercised during hearings. We posit that all three factors contribute to the observed outcome.

The predominant focus on rape among the interviewees may be attributed to the surrounding discursive contexts. Historically, victim blaming has been associated with rape in public discourse and intra-professional discussions among legal practitioners. The concept and the awareness of victim blaming were largely introduced through feminist critique of how legal systems address rape victims. As researchers, we also acknowledge that we may be affected by such discourse. Consequently, we may have inadvertently emphasized rape during our interviews, despite intending to explore perspectives on all three types of cases.

Interviewing professionals does not definitively answer how the attribution of moral guilt to complainants differs between crime types. We have addressed factors that may elucidate differences perceived by the interviewees. However, it is pertinent to highlight similarities that would increase the likelihood of attributing moral guilt to complainants. In rape cases, inquiring about events preceding and following the incident has been criticized. Questions about delay in filing complaints, alcohol consumption, attire, and provocative behaviour can be seen as assigning blame. Complainants in assault cases face similar questions: ‘Why was the incident not reported for two days?’ ‘Why were you wearing attire associated with football hooligans?’ ‘Did you approach the defendant threateningly?’ A significant finding is that the interviewees did not reflect extensively on whether assault complainants might experience blame, or why similar questioning elicits disparate reactions. This lack of reflection indicates the need for further research into the mechanisms of attributing – or not attributing – moral guilt to complainants in assault cases, a common crime category.

6.3 | Reflection on transferability and method

Like any research, this study’s outcome must be interpreted in the context of its execution. As a victim-blaming investigation, the empirical focus solely includes the court hearing situation, not other crucial contexts. As with any qualitative interview study, findings cannot be generalized to Sweden’s situation but represent patterns that may be theoretically relevant to other contexts and for further empirical research.

The Swedish context exhibits distinctive characteristics that necessitate caution when considering the relevance of the findings to other countries. Recent public discourse on rape trials, #MeToo, and the implementation of consent-based legislation may have contributed to our results indicating that complainant blaming is relatively infrequent. However, few interviewees referenced the new consent-based rape law regarding the attribution of moral guilt. Similar developments are observable in numerous comparable countries.

There are features in Swedish legislation and court proceedings that may render them less burdensome for complainants. Complainants in Sweden possess extensive participatory rights in the judicial process, particularly in rape cases.⁵⁸ Hearings are conducted in a relatively informal

⁵⁸ Carroll, op. cit., n. 45.

manner, within a culture where interrogation is not particularly confrontational, despite being a two-party process. There are no juries, eliminating the additional tension of ‘ordinary people’ serving as an audience during intimate questioning. Moreover, rape victims are supported by complainants’ counsels who can explain the process, provide emotional support, and contribute by posing questions and supplementing prosecutors’ closing arguments. Furthermore, Sweden regards itself as a country with a strong commitment to gender equality.

7 | CONCLUSION

In conclusion, this study demonstrates that interviewed court professionals were aware of potential undue attribution of moral guilt to complainants, particularly in rape cases. We argue that their perspective accurately reflects courtroom proceedings. Nevertheless, the interviewees reported that complainants in rape cases and, to a lesser extent, fraud cases are sometimes subjected to blame, typically during defence cross-examination. They acknowledged that certain lines of questioning could engender feelings of blame in complainants, despite being legally relevant and not intentionally designed to cast aspersions.

Regarding disparities among the three case types, examples and narratives of the attribution of moral guilt were predominantly associated with rape and never with assault. While this may reflect inherent differences between these crime categories, we argue that further investigation into potential complainant blaming in assault and other criminal offences is warranted.

While this study suggests that blaming rape complainants may be less prevalent than indicated in the literature, we maintain that other aspects of rape hearings contribute significantly to complainants’ stress. Consequently, we propose that future research examines various sources of tension and their contributions to negative experiences for complainants. On a positive note, we conclude that there may be fewer reasons for victims to avoid reporting rape due to fear of blame than generally believed.⁵⁹ This observation should encourage more victims to file complaints, contributing to society’s response to this serious offence.

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⁵⁹ See for example Swedish National Council for Crime Prevention, *Förtroendet för rättsväsendet: En analys av bakgrundsfaktorer som genererar lågt förtroende* [Confidence in the Judiciary: An Analysis of Background Factors that Generate Low Trust] (2022).