



UMEÅ UNIVERSITY

# **How rape myths are used in Swedish child rape court cases in comparison with adults**

## **A critical discourse analysis**

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## **Abstract**

A commonality in rape trials is that the legal system is colored by myths and norms – more specifically ‘rape myths’. These myths includes the perception of ‘men as more sex needing’, ‘rape victim brought the offense on themselves’ and so forth. A new law on sex crimes was introduced in 2005 in Sweden in order to create a stronger protection when it comes to rape and sexual assaults of different kinds – especially the removal of violence in child rape cases. Previous research conclude that rape myths are still routinely used at trial in adult rape and sexual assault cases. Rape myths in court often relates to a specific ‘rational’ behavior as the ‘normal’ or ‘right’ way to act, which relates to a masculinized view of reasoning colored by the patriarchal society. The overall purpose of this paper is to examine how rape myths appear in trials involving children; if children are viewed in the same way as adults according to these myths in rape cases – or differently, and how these myths are manifested. Also, a certain focus is on gender similarities and differences when it comes to rape myths. The paper is based upon 20 Swedish court cases from 2005 to 2017. Five cases within each group of victims: girls, boys, women and men. The thesis uses critical discourse analysis along with feminist studies to analyze these rape myths. This study shows that rape myths also are used in child rape cases, and thus, that children are no exception. Moreover, victimized females are often found in a disadvantaged position within court, as opposed to males. Girls seem to be most disadvantaged due to their position as *both young and female*. The results further indicates that legislation can be a useful tool to create rape myth busters.

Keywords: rape, child, rape myths

## 1. INTRODUCTION

In Sweden, a new law on sex crimes was introduced in 2005 in order to create a stronger protection when it comes to rape and sexual assaults of different kinds. The definition of rape was supposed to expand to include more cases – and a specific crime definition of ‘rape against children’ was introduced to explicitly criminalize sex crime against children and call it for what it is: Rape (Prop. 2004/05:45). The prerequisite of constraint and threat were reduced. For children, the prerequisite of force were completely removed, since a child should never have to defend itself in a sexual situation. Further, exploitation of a person due to a helpless state (such as unconsciousness, sleep, intoxication, drugs etc.) was included in the new law on sex crimes.

Generally, more sexual offenses are reported today than previously in Sweden. These increased reports has been steady since the 1970’s. A large part of this tendency could be due to the increased inclination with the population to report sexual offenses. Generally, assault rapes has decreased and sexual offenses indoors has increased. The percentage that is victims of sexual offenses in Sweden is similar to other Nordic countries. In comparison to other countries in Europe, Sweden count every sexual event as one offense which is probably why the exposedness of sexual offenses in Sweden is above average (BRÅ, 2011).

More specifically, about 80 percent of the victims of sex crimes are women perpetrated by men. About 10 percent of the victims are men perpetrated by men and 3-4 percent of the victims are women perpetrated by women. Events where the victim is male and the perpetrator is female has increased from 3 percent to 6 percent from 2005 to 2011 (BRÅ, 2011). Mostly, it is younger people who are victimized (under 45 years old). There is also a slight gender difference – most female victims are under 25 years old while the men are older. Moreover, 54 percent of the victims are adults and 46 percent of the victims are children. In explicit rape cases, 94 percent of the victims were female. And victims under 15 years old are in 90 percent of the cases female (BRÅ, 2011).

A commonality in rape trials (as opposed to other kinds of offenses) is that the legal system is colored by myths and norms – more specifically ‘rape myths’. These myths include the perception of ‘men as more sex needing’, ‘rape victims brought the offense on themselves’, it is not rape if the victim does not scream, fight or get injured, it is rape if the victim is provocative, dress sexy or is intoxicated and ‘male rape is an offense that takes place between gay men’ and so forth.

## 1.1 Previous research

### 1.1.1 Influence of Rape Myth Acceptance

Most research about rape myths focus on Rape Myth Acceptance (RMA). RMA is a scale which measure one's rape myth levels, i.e. how likely it is that you rely on rape myths or not. When related to substance use and victim blaming, findings show that men demonstrate higher rape myth acceptance than women and attribute higher levels of blame to victims than women (Grubb and Turner, 2012). Further, women who consumed alcohol prior to their attack are attributed higher levels of blame than those women who are not intoxicated. Moreover, women who violate traditional gender norms are attributed more blame than women who do not (Grubb and Turner, 2012). When RMA is related to victim blaming findings continue to show that men display higher RMA than women. The strong association between gender and RMA support the hypothesis that gender inequality perpetuates rape myths, that is, a male-dominant society would probably justify rape and blame the victims. Further, RMA is also strongly associated with hostile behaviors toward women – supporting the fact that sexism perpetuates RMA (Suarez and Gadalla, 2010). When RMA is investigated against prior victimization and just world beliefs the result show that men, younger respondents and those with less education were more likely to support rape myths. Beliefs in a just world is positively associated with rape myths (Vonderhaar and Carmody, 2014).

### 1.1.2 Male rape victims, homosexual beliefs and child perspectives

In recent years, the development of Male Rape Myth Acceptance (MRMA) has been crucial. When studying male rape victims similarities was found with female rape victims. The more blame one can put on the victim the higher RMA one would have, thus the more apologetic towards perpetrators one is (Sleath and Bull, 2010). One finding regarding male rape victims is the perception of the victim and/or the perpetrator as being homosexual (Sleath and Bull, 2010; Chapleu et al., 2008; McGee et al., 2011; Fischer and Pina, 2013). This perception seem to be related to beliefs such as: (a) Being raped by a male attacker is synonymous with the loss of masculinity, (b) “men who are sexually assaulted by men must be gay”, (c) “men are incapable of functioning sexually unless they are sexually aroused”, (d) “men cannot be forced to have sex against their will”, (e) “men are less affected by sexual assault than women”, (f) “men are in a constant state of readiness to accept any sexual opportunity”, and (g) “a man is expected to be able to defend himself against sexual assault”. These perceptions seem to be linked to male rape myths of “it is his own fault for not escaping” and “men is more sex-needing so he cannot be raped”, but also to masculinity, linking to men as being stronger than women or viewed as

not “man enough” if not escaping the situation. Thus, people tend to agree with myths if the perpetrator is female rather than male (Sleath and Bull, 2010; Chapleau et al., 2008; McGee et al., 2011; Fischer and Pina, 2013).

Regarding children, perceptions about child abuse mostly committed by strangers still persist even though more knowledge about children being victimized by someone close to them is more widespread (McGee, 2011). For most people, women are being viewed less as a perpetrator than men regarding child abuse (McGee, 2011). This can both be related to statistics that men actually to a larger extent are perpetrators also in situations involving children, but also to gender norms about women being more caring.

### 1.1.3 Rape myths within a court context

Some research investigate rape myths within the space of the court also relate to Rape Myth Acceptance. Stewart and Jacquin (2010) examine the decisions of 229 mock jurors, and how the decision making is influenced by substance use, type of substance, the willingness to use substances, and rape myths. The results show that a person who ingested alcohol had highest guilt ratings, and a person who willingly ingested a substance was viewed as less credible and more to blame for the rape compared to one who unwillingly used a substance (such as Rohypnol). The results show further that there is a relation between women, intoxication and sexual activity in the decision making. The need for information about the woman’s past sexual history was important for the juror in order to decide whether she was the ‘sort of woman’ who would do ‘this sort of thing’. And this was very much related to the attribution of blame and responsibility – the more she was ‘that woman’, she also was more to blame (Stewart and Jacquin, 2010). In a Japanese court context, a woman must show and use her body to refuse the rape event, but there is little space to voice this non-consent since women are not constructed as freely consenting subjects (Burns, 2004). Burns (2004) gives an explanation as to why rape myths might be so widely used in the courtroom. She says that it might be ‘the large number of cases coming before judges that do actually conform to the rape script, thus reinforcing its validity’ (Burns, 2004, p 94). Regarding juror’s decision making, things like the lack of physical resistance, delayed reporting and calm emotional demeanor affected the decision making in the courtroom (Ellison and Munro, 2009). The overall notion was that ‘different people will react differently to frightening or traumatic experiences’, but the reality showed the opposite. A number of assumptions regarding the instinct to fight back, the compulsion to report immediately and the inability to control one’s attendant emotions. This ‘normal’ way to act and a ‘rational’ behavior in rape cases in relation to people being perceived as being wholly truthful

or untruthful is what keep rape myths being relevant in rape cases (Smith and Skinner, 2017). Even though resistance within the courtroom occurs more often, strong beliefs that blame the victim, cast doubt, excuse the accused and that rape looks like a certain way, seem to relate to the notion of the ‘real rape’.

Regarding sexual assaults involving children, research show that a 15-year-old and the sexually dressed victim is more to blame for her own abuse as oppose to a 12-year-old and the non-sexually dressed victim (Rogers et al., 2016). In addition, men are more blaming in general. The findings suggest children closer to the legal age of sexual self-determination are treated more like adults. Adolescent victims were blamed in much the same way as adult victims when dressed sexually. Because of this they are viewed as more blameworthy according to this ‘bad’ characteristics or behavior, implying a lack of ‘female respectability’ (Rogers et al., 2016).

## 1.2 Purpose and research questions

In this context, it is of interest to examine how these myths appear in trials involving children – are children viewed in the same way as adults according to these myths in rape cases – or differently, and how are these myths manifested? And does rape myths differ between sexes – in that case, how and why?

The aim is, thus, to map out rape myths in relation to sex/gender, contrasting victims of children and adults.

## 2. THEORY AND METHOD

First, an explanation of what Critical Discourse Analysis is and how it will be used will be stated. Second, a summary of the ontological and epistemological starting points – including explicit definitions of the different concepts. Third, and last, a brief coding process will be illustrated, a summary of the material will be incorporated and a short discussion of limitations will be added.

### 2.1 Critical Discourse Analysis

For this purpose, an overall Critical Discourse Analysis will be used in order to entail how rape myths appear in cases involving children – focusing on a comparison between children and adults, and between sexes. Critical Discourse Analysis (CDA) “focuses on the ways discourse structures enact, confirm, legitimate, reproduce, or challenge relations of power abuse (dominance) in society.” (van Dijk, 2015, p 467) Discourses are how one talk about something. Therefore, CDA analyzes inequalities and how they come forward through power relations

within a written or oral description. Having its origin in language, critical discourse analysis works as a bridge between micro (interactional, agency or individual) level and macro (structural, institutional or organizational) level (van Dijk, 2015, p 468). When either part exercise power, they also control the context and structures of text and talk. As a result, they also control the intentions, plans, knowledge, opinions, attitudes and ideologies – and moreover, beliefs, prejudices and the making of stereotypes (van Dijk, 2015 p 472-473). In line with the definition from Foucault, critical discourse analysis challenge the taken-for-granted knowledge in the dogmatic position (Gunnarsson et. al., 2007, p 9).

CDA will be used in order to discover rape myth patterns in 20 court cases. It will be used to de-construct the text/discourse in order to reveal rape myths within it. By doing this, it will show how power differentials operate and, thus, how certain discourses are used to maintain and reproduce power.

## 2.2 Ontological and epistemological starting points

### 2.2.1 Definition of Rape myths

A ‘rape myth’ is an inaccurate assumption about rape (Burrowes, 2013, p 5). Rape is, therefore, often defined as stereotyped and with prejudice. According to Bohner and McGee (2009, p 3; 2011, p 3581), with its foundation in Burt’s definition of rape myths, rape myths are “prejudicial, stereotyped, or false beliefs about rape, rape victims, and rapists” that persist in society. Other definitions focus on rape as prescriptive or descriptive beliefs which serve to deny, downplay or justify sexual violence (Smith and Skinner, 2017, p 3). Rape myths include everything from viewing male sexuality as uncontrollable, arguing that the victim brought rape onto itself due to intoxication, dressing or acting in a certain way, to the fact that a ‘real rape’ only is real if the victim scream, fight or get injured (Smith and Skinner, 2007, p 3-4). Towards this background, there are roughly four types of rape myths: 1) Beliefs that blame the victim, 2) Beliefs that cast doubt on allegations, 3) Beliefs that excuse the accused, and 4) Beliefs that assume rape only occurs in certain social groups.

### 2.2.2 Gender and feminist studies – including intersectionality

Gender and feminist studies focus broadly on how sex and gender are intertwined in society. More specifically, it analyzes how society is marked by sexuality, gender relations and gender norms (Jeffner, 1997, p 15). When studying rape myths in relation to sexuality, but also rape in a broader sense in relation to men and women, it is inevitable to disregard the feminist perspective. The gendered focus will for that reason not be so much about the actual sex –

although it is quite present since most rape crimes are done by men on women. But it stops there. Rather, it will focus more about the discourse of what makes us men and women (Jeffner, 1997, p 16). Taking Simone de Beauvoir (1949) as a starting point: “One is not born a woman, one becomes one”, and relating to known concepts of ‘doing gender’, performativity, gender norms, hegemony and the gender order (Acker, 2006; Yancey-Martin, 2001; and Jeffner, 1997). When doing gender, specific characteristics are coded masculine and feminine in order to fit men and women respectively – such as being vulnerable when showing emotions as something feminine, and being strong (physically and mentally) is coded masculine. This means that men and women are socially constructed in society throughout a lifelong process (Jeffner, 1997, p 17). The gender and feminist spectrum will be broadened by the concepts of stereotypes, beliefs, prejudices, power and myths (Wennstam, 2016). More specifically, the relation between gender, power and sexuality will be used. Jeffner (1997, p 20-21), against the definition from Catherine MacKinnon, underlines that sexuality as a social construction is based on men’s power, defined by men, forced onto women – and causes males’ superiority and females’ subordination, which is why power relations must be analyzed. But, with the limitation of seeing offenders and victims as men or women – thus, not relating to queer studies.

Just like Critical Discourse Analysis, Gender and Feminist studies also focus on identifying and analyzing power relations. Structures and inequalities between men and women can be identified with an intersectional perspective. Intersectionality means that the analysis is based upon several dimensions, as opposed to just one. The concept was first introduced by Kimberle Crenshaw, who argued that the intersectional identity of a black woman as being both black *and* woman, women of color was marginalized within both group regarding battering and rape (1995, p 1244). Intersectionality is a useful tool in order to detect how power is used and distributed, but also when looking at several and different power relations at the same time. Since power relations cannot be ranked, but are just as equally important in defining an individual, it is important to analyze several dimensions at the time. Gender can therefore not be separated from other categories. This because we are more than “men and women”. This paper will specifically look into gender in relation to sexuality and age.

### 2.2.3 Understanding of law

In this thesis, law is viewed as both ‘dogmatic’ and ‘challenging’ (Gunnarsson et al., 2007, p 5-8). Law can both be created from above – relating to the hierarchy of law, to the ‘will of the legislator’, and thus, to how the court interpret the law in the way they are reasoning in different cases. But law can also be seen as deriving from below – a way to create societal systems of

norms. In a society there are certain rules and regulations which constrains our ways of viewing things. For instance, being an older male in the court room may restrict the knowledge of how it is to be a young girl – not sharing the same experiences. Therefore, law can be seen as having double functions. It can both be a study of *in law* and *on law*. This doctrinal approach challenges the strict conception of law ‘as it is’. The challenge of law in this thesis will focus on the legal gender-blindness issue (Feenan, 2013, p 210ff). An overall issue in the legal process is the practice of the legal subject as masculine. According to Feenan (2013, p 207), ‘law’s objectivity is male subjectivity’. If law is not objective, but colored by male subjectivity, what effect will this have on rape myths in general, and on the intersection of age and gender more specifically? Does the fact that rape is a female crime in general have an impact on the outcomes of the reasoning by the court?

### 2.3 The coding process

The process started off with a deductive approach – a specific theoretical frame when reading the court cases. All cases were coded against the existing rape myths. Each myth were given a number and the number were then written in the margin of the text (see appendix 1). A rough coding were initially done through a couple of words accompanying the number, stating what the text was saying. Parts of the text which did not fit the rape myths were given a letter; such as A for other, B for child related things, and G for gender. And some text passages fit into several rape myths, and thus, were given several codes. The numbered codes – related to specific rape myths and other things – were then transformed into themes. Below is an example of the coding process:

Case	Rough coding	Code	Rape myth	Theme
(...) the plaintiff has described the feeling of something penetrating his anus. And the findings of cracks around the rectum shows that something has entered his backpage, as well as the information from the plaintiff about the discomfort in rectum, and the fact that he was bleeding from the same location.	Force, violence, abuse, domination, Real rape	4	Rape is a crime of passion	adults; credibility, real rape

### 2.4 The material

The analysis will be employed by analyzing and interpreting 20 Swedish rape court cases from 2005 to 2017 in order to establish which myths that occurs and how these myths are formulated by the legal system. Five each with victimized girls, boys, men and women respectively. The

material is focused to District Courts and Courts of Appeal only, thus, not including the Supreme Court. This, because the analysis will focus on how the court reason regarding different kind of victims in general. Often, the Supreme Court discusses specific interpretations of different prerequisites, whether or not to use them in the actual case, and only take on the more specific cases, thus, not relating to a general reasoning by the court.

The 20 cases are mostly found at the Zeteo database over court cases. The advanced search mode allowed to include ‘district courts’ and ‘courts of appeal’ by ticking boxes for them respectively. When finding the group of victimized women, the search word ‘rape’ (Swe. “våldtäkt”) was used within a time frame of 2005-04-01 to 2017-03-19. For this study, it is of importance to analyze cases after the new law on sex crime was introduced in 2005 because of the removed requirement of violence. The time frame is therefore of importance because in 2005 the Swedish Penal Code was changed to include children as victims for rape. Further, a randomizer were used to specify which page number and which case to use. Page numbers differed, but there was always 25 cases in each page. For girls, the same procedure was initiated, but adding a search word: ‘child’. For boys, the procedure was almost the same as for girls, with the difference that more search words were sometimes added: ‘boy(s)’ and/or ‘anus’/’anal’. But often it was easier to only go with ‘child’ and open cases and read whether or not the victim was a boy or not in terms of expressions of ‘he’ was used in combination with the victim. For men, search words like ‘anus’/’anal’ were used, but did not indicate much findings. For the group of men, I found a paper focusing on men as victims in sexual assault cases by Emmi Lind in year 2016, which stated specific cases of victimized men. I could not find every single one, but found exactly five – so those were the ones I ended up using.

To further clarify, when speaking of children, the words ‘girl(s)’ and ‘boy(s)’ are used in order to signal young victims. When speaking of adults, the words ‘woman/women’ and ‘man/men’ are used in order to contribute to the understanding of people over 18 years old. When using ‘males’ and ‘females’, both groups are included in order to signal a clearer gender difference (i.e. boys and men as males vs girls and women as females).

It should also be mentioned that the Swedish court cases are in Swedish and therefore, all translations from the material are my own.

## 2.5 Limitations/ethics

For this thesis, there are mainly two limitations: First, while analyzing rape myths, the binary and legal sex are in focus, thus, not relating concepts of gender and intersectionality to queer

studies. Second, the narrow selection of court cases makes it difficult to make generalizations. Although, it is still possible to speak in terms of patterns.

### 3 ANALYSIS

During this part, rape myths in trials will be discussed in relation to comparisons of children and adults, girls and boys, and, women and men. Furthermore, special child prerequisites in relation to rape myths, regarding age and appearance, will be explored. Lastly, a specific focus on rape myth resistance and rape myth busters will be included.

#### 3.1 Rape myths: children vs adults

##### 3.1.1 Credibility

Regardless if you are a child or an adult, female or male, the credibility of the rape victim is often evaluated by the court. Credibility relates to several rape myths such as “the victim brought the rape on itself”. Towards this background, it seems like the victim is in an undermined position from the start. It is like if the victim somehow needs to prove that the rape was out of her/his control in order to legitimize it. Smith and Skinner (2017, p 21) argue that this is the way the court still keep rape myths relevant. The dichotomy of wholly accurate/wholly inaccurate is dependent upon rational actions and statements to create the credibility. But the way credibility is viewed differs depending who the victim is. Credibility is about whether or not the victim is to be believed trustworthy. Credibility in rape cases is very linked to the victim’s story – if the person is calm, dispassionate and thorough, and if the story is detailed, nuanced, and excessive, and if the story includes contradictions or inconsistencies, or not. In case B 2496-15 regarding a victimized girl, the court argued:

She has told what happened before and after each event. Regarding the first charge, she has left different information in different interrogations about what happened. Her information regarding the second and third charges has been consistent (...), but the overall perception is that her story lacks details.

The court also discusses the time elapsed since the events, how old she was then, and how tough it has been for her when telling about these events, in order to make it clear that she is a believable person. In the same, harshly manner, the court in case B 3195-16 regarding two boy victims reasoned as follows:

Plaintiff A’s story have to be cautiously judged (...), while plaintiff B’s story have relatively high probative value.

A victim’s credibility is also linked to objective evidence, such as DNA-analysis, forensic statements of bruising/violence and different medical tests and documentations (alcohol, blood,

pictures of bruises etc.). In case B 2605-13 regarding an adult male victim, the court discusses a secondary transmission, which is being discredited by a forensic analyst as not possible considering the quantity of sperm that was found on the victim's clothes and skin:

(...) this explanation is too unrealistic, so one can completely disregard this theory.

Where no such DNA-analysis is found, a more extensive discussion regarding whether or not the victim actually wanted to have sex or not is introduced. In case B 770-16, a woman was describing an intrusion in her genital area, since it 'felt sticky'. The court discussed the fact that:

Words are against words. (...) She lacked some of her clothes in the morning, she was intoxicated, but is considered to be trustworthy in parts of which she does remember, since those parts are clear and logical.

The court in this case argues in her favor due to a male friend, who witnessed according to her side of the story. The importance of validity through another person's story (i.e. witness) seem crucial for the credibility of the victim. This because there is another person who can verify the victim's story. In case B 2403-16 regarding an event during New Year's Eve, the victim's friends could verify that she had been drunk, and the offender's friends could verify that he had been sitting on the side of the bed. In B 2261-14, a girl who had been raped by a cousin, the mother and the sister verified details in her story about a blanket that was in the way to see what actually happened, and the perpetrator's claim that her sister was there, which the sister contradicted – thus, making the perpetrator as the one not wholly truthful, thus, able to be lying. The court underline the importance of:

... the information given independently of one another. (...) Her information has been confirmed by the younger sister and the plaintiffs' mothers.

A final aspect of credibility is the use of language when telling information about the event. Here, there seems to be a big difference between children and adults. In case B 709-16 a girl was less credible according to the court for not communicating the event well enough:

Regarding the question whether or not the offender has inserted his fingers inside the female genitals, she [the victim] has not stated something else than "taking the finger in her wee-wee" (...) She has shown, with a pinching movement, how the perpetrator would have done on her vagina.

This is being disregarded as not clear enough by the court, as if a young girl should know about sexual motions. Alternatively, a young girl does not have to know about sexual motions, but she is still being punished in court by not using the language that is wanted by the court, or stating things in a certain way. Thus, putting her in an unfavorable position for not having the well-developed communication skills that seems to be needed in order to be credible.

Another factor, when it comes to children and credibility, is that children in general are regarded as less credible if they have been lying about their age – saying that they are older than they are. In case B 883-14 the court discussed the issue of age related to credibility:

... The plaintiff gave false information during the first hearing and she did not correct them until afterwards. (...) The information by the offender about asking the plaintiff and her friend about their ages and the fact that they have answered 15 years old, therefore, have to be accepted.

When only focusing on one party regarding the event, it might result in leaving out other important parts. Especially when the discussion relates to credibility and discrediting. Here, CDA is to be shown to be a useful tool to discover power relations and to ‘see’ what is not ‘there’ (van Dijk, 2015). If the child’s credibility is evaluated due to lying, the adult’s understanding must also be evaluated. Adults could, for instance, be evaluated according to the general perception of the child by the court – such as the understanding that the child is a child in the way he or she uses language with words such as “asså”, “typ” and “oxå” (Eng. abbreviations most often used in text communication such as “lol” etc.). When the court does not even consider the adult(s) as having some sort of responsibility, it creates a power imbalance between children and adults within a court setting – shifting the responsibility from one party to another, thus, making it clear where the responsibility should be. When the court omit to be active in the process of shifting the power balance it also becomes clear that “the victim brought it onto itself”.

### 3.1.2 ‘Real rape’, credibility and violence among adults

Credibility relates well to the belief of ‘real rape’, such as the notion that the rape happened in ‘a dark alley’ with a stranger and that it were a lot of violence included which left clear marks on the victim’s body and that the victim tried to escape, resist and/or fight back. Because the more out of control the victim was, the more rational the situation becomes, and the more credible the victim is perceived. Just like credibility, the notion of ‘real rape’ is very present regardless of victim type. The perception of rape is that it occurs as assault rape with a stranger, is very present in court. If a woman is being followed by a man on her way home after a night out, if a boy has been contacted by a man on the Internet, if a girl has been molested by her male cousin who is not close to her and if a male mailman is attacked by another man in a stairwell, then, the court view the event more serious (B 752-16, B 2261-14, B 3195-16, B 5161-08). The perception of violence in rape cases in relation to ‘real rape’ occurs among both children and adults, but differs in the way it is reasoned about by the court. The more evident

the violence has been, the easier it is for the court to convict for rape. In case B 4345-13, a man had something penetrating his anus contributing to damages:

(...) the plaintiff has described the feeling of something penetrating his anus. And the findings of cracks around the rectum shows that something has entered his backpassage, as well as the information from the plaintiff about the discomfort in rectum, and the fact that he was bleeding from the same location.

Often, rape is evaluated through penetration – for both children and adults. The measurement is that the rape must be executed through penetration of the penis, or something that is comparable as penetrating intercourse (i.e. could be a finger or an item). The myth of rape leaving visible marks on the body or the genitals, more often disadvantage females than males. This can be explained through the concept of ‘doing gender’ (Acker, 2006; Yancey-Martin, 2001). Being female is being linked to the person capable of conception, and the male is the person doing the impregnation. Thus, it is more ‘natural’ that women are being penetrated than men. But this, of course, can also be linked to sexuality and the hetero norm. The penetration is here more acceptable if done on a woman, rather than a man, because penetration of the vagina is more ‘normal’ than a penetration of an anus (Jeffner, 1997, p 23-24). This becomes very clear in case B 2605-13 regarding a man who had been raped:

It is not shown that an object penetrated the plaintiff’s rectum. (...) But he [the offender] can be sentenced for performing oral sex on the plaintiff. This action (...) is to equalize with penetrating intercourse.

Even though the event was not judged as rape according to a penetration, it still was evaluated as rape due to the similarity between penetrating intercourse and oral sex. For females, discourses about oral sex almost never is considered to be similar to penetrating intercourse. Maybe, the conception of sexuality plays a certain part in this. Comparing against the hetero norm, oral sex is seen as accepted sex between males and females. According to Jeffner (1997, p 20-21), the interpretation of sexuality is from male’s points of views, thus, making penetrating sex as something ‘normal’ and ‘natural’. In combination with the hetero norm, this is more evident between men and women as opposed to between two men. Consequently, oral sex in a homosexual context puts the court for the judgement of the sex as being ‘wrong’, ‘unaccepted’ and/or ‘pathological’, thus, interpret the situation as rape.

Violence, in an adult setting, is also about whether or not the victim was in a ‘particularly vulnerable situation’, thus linked to alcohol consumption (which does not exist in the discussion from the court regarding child rape cases). In this way, certain things differs between adults and children. A more thorough discussion between women and men regarding alcohol is to be found in an upcoming part below.

### 3.1.3 ‘Real rape’, credibility and violence among children

When it comes to children regarding ‘real rape’ in combination with the use of force, violence and dominance, the court in case B 2261-14, regarding a girl molested by her male cousin, states:

... The offender had his hand placed on her female genitals, and also entered her vagina with his fingers. The penetration was not painful nor unpleasant, and the plaintiff did not resist.

Even though the prerequisite of force for children in rape cases has been taken away, the court still investigate force as a factor for rape. It seems like most of the facts in rape cases are judged against the ‘real rape’-myth. And these rape myths can be both positive and negative for the victim. If enough myths are positive – or in favor of – the victim, it is more likely that the victim is believed and thus, that the offender gets sentenced. And the fact that much negative rape myths can cost, as we can see in the case B 3713-16, where a 13-year old girl was molested by a 19-year old male:

The plaintiff was interested of losing her virginity, and was therefore interested in having sexual intercourse with the offender. (...) The plaintiff regretted to want to have sex. The offender then started to persuade her into having sex. Eventually, she herself took off her clothes and went to sit on the side of the bed, when the offender put his hand on her shoulder and tipped her over so that she was lying on her back in the bed, and then had vaginal intercourse. The offender used a condom as protection. The visit lasted for only half an hour.

Just the slightest doubt that the victim might have wanted it – whether that be in terms of wanting to lose the virginity or something else – puts the rape myth of ‘blaming the victim’ in action. Thus, relating to the perception of a person’s sexuality, sexual freedom and own choices. Making it about her initiative result in the idea that it was what she wanted, makes her being perceived as having a large sexual appetite. Because of this, she is being viewed as ‘the whore’, putting the shame and guilt onto her, and thus, making her loose her credibility.

### 3.1.4 Credibility, ‘willingness’ and consent

When discussing credibility for different types of victims, the court also discusses ‘willingness’ among the victims – or consent, if one will. Many courts reason that even though consent might have been present, it does not liberate the offender from responsibility. This was especially visible in case B 1603-09 concerning an adult male victim:

The rule of responsibility regarding being in a vulnerable situation aim to protect people who, due to particular circumstances, find oneself in that kind of condition, and because of that lacks the ability to defend their sexual integrity. A consequence of this is that neither consent does not liberate the offender from responsibility.

Regarding both children and adults, if there is the slightest chance that the victim might have wanted to have sex, it affects the outcome of event. The victim is questioned regarding his/her intentions. In case B 9166-16 the victim had had two intercourses – the first one voluntary, the second one forced on her:

... it has not emerged special circumstances which can put the event beyond reasonable doubt that the offender was indifferent before the effect that the plaintiff was sleeping. He [the offender] did not had intent for the crime, which means that he cannot be convicted for rape.

The slightest doubt makes it more difficult, as a victim, to recall their consent. The same reasoning is made by the court regarding children. While consent for adults relates to a ‘sexual thirst’ and the probability of, in that particular situation, wanting to have sex – consent for children is often linked to solely a ‘sexual thirst’:

... the plaintiff (...) was sexually experienced and was the one who initiated the sexual activities with the defendant and instructed her how to do (...) The plaintiff does not seem to have been affected negatively of the event, but quite the opposite, been telling about the sexual activities for several pupils in his school. (RH 2013:12)

Children, according to the preparatory work, are not able to give consent for sexual activities, because they are viewed as being in a vulnerable position due to the fact that they are children. Children, somehow, seem to be able to consent anyway – in specific situations. For children, the consent is viewed in combination to ‘sexual thirst’, which is linked to their sexual maturity, and moreover, to how close they are in age to their sexual self-determination (15 years old). Thus, rape is very linked to sexuality. As if one is more willing just because one has reached a specific age, even though if one finds it interesting or exciting with sex. The court seem to register some sort of consent if there has been a clear communication about how, when, how long etc. the sexual activities are supposed to be. Although, there seem to be a limitation in this consent. The factor of ‘adventure’ in the sexual acts seem to determine whether or not a child has been able to agree to it or not. In case B 3195-16, two boys ended up in a car, and one of them was selling sex, the court reasoned as follows:

Mutual understanding existed between the perpetrators, where, one at the time, has assaulted the plaintiff. And when one person was done, the next one proceeded. (...) It is clear that the plaintiff has acted upon consent. Although, the court questions this according to the fact that the plaintiff initiated everything which would satisfy his own desires. (...) The investigation points to the opposite – that the adults wanted these sexual acts (...)

Children, thus, seem not to be able to consent to more unusual sexual activates, but never the less, able to somehow consent to more usual sexual events. The difficulty with the discourse about ‘willingness’ is that it links into many other perceptions of how well the victim knew the perpetrator, thus, relating to the perception of assault rape with an unknown person, and, the

degree of initiative, thus, contributing to reduce the seriousness of rape into something more trivial (such as a dispute between teenagers). And, the ‘willingness’ result in objectification of female’s and male’s – and more importantly children’s – bodies from gender stereotypes. Putting males in the situation as the sexually insatiable just because of the false perception of male as ‘always wanting to have sex’. And it puts females in a situation of being sexy, but not sexual. How these differences and similarities is present regarding girls and boys, and, women and men, is further discussed below.

### 3.2 Rape myths: girls vs boys

#### 3.2.1 ‘Willingness’

The ‘willingness’ regarding children differs a bit between sexes. Boys are viewed as more sexual needing due to their gender and the perception of male roles. The willingness from boys to want to have sex around a specific age are very clear from the court:

In this case, the victimized boy was around 14 years and 2 months at the occasion. The plaintiff has stated himself that the sexual actions were completely consensual from his point of view. The intercourse was also to some point planned; by the text message conversation, which the plaintiff started and also were the more operational part, where the subject of conversation more and more were focused around sex. It is the plaintiff who took the initiative to visit the defendant. (...) The plaintiff’s consent at both occasions appears to be genuine and honest (B 2753-16)

This willingness can be interpreted as something ‘normal’ around a certain age, and thus, on prejudices on how older children are supposed to be, behave, want and be willing to do. Girls are not necessarily seen as willing due to their gender. Quite the opposite, the gender norms of girls tells that girls should be sexy, but not sexual. If she becomes sexual, rapidly she also becomes ‘the whore’. The contrast for girls of searching for confirmation, of being liked or seen as good-looking, and as a person who wants to have sex, at the same time not being ‘slutty’, too sexual, not being verified or seen as not good-looking, becomes a delicate balance for many girls to handle. Thus, girls are viewed as more sexual needing if they have indicated some kind of likability for their offender or if they have been giving the impression of flirting:

... the girls have been fond of the defendant and wanting to be with him. (...) From the enquiry with both of the plaintiffs it is clear that both of them fancied the defendant. (B 2261-14)

‘Willingness’ relates clearly to ‘victim-blaming’ and rape myths of the perception that it is the victim’s fault if he or she was not clear enough when refusing. Refusing is ideally about screaming, saying no and fighting back. But it can also include not initiating or telling someone about the event.

Discourses about ‘willingness’ is linked to the perception of heterosexuality (Jeffner, 1997, p 23ff). This, because the court often have a preset notion of that girls is viewed as more willing when perpetrated by a man, and a boy is viewed more willing when perpetrated by a woman. In all cases regarding girls, the court always discussed the consideration of the girl as potentially consenting. Sometimes this was enough for a dismissal, sometimes not. Regarding victimized boys, the two cases with a female perpetrator, the boys was viewed as consenting, and the three cases with male perpetrators the boys were not even considered to the possibility of consenting. This leaves out this willingness when the rape scenario is linked to man on boys or homosexual notions. Thus, the rape myth of raped men as being homosexual is very present. Due to this fact, it is easier for the court to judge in favor for male victims. Easier in the sense that less circumstances are discussed before the court, regardless if the victim was willing, were selling sex or other things that in all cases with girls was meticulously discussed.

### 3.2.2 ‘Crying rape’ and emotions

A commonality between both girls and boys is that the court often draw the children’s innocence, ignorance and being naïve to rape myths that relates to how the victims should feel, such as ‘you can tell if the victim has been raped by the way he/she acts’ and ‘if the victim did not complain immediately it was not rape’. The court in case B 1045-16, regarding a victimized boy, reasoned as follows:

Starting off, it appears completely unlikely that the victim would have been laughing when the offender, with violence and with resistance from the victim, forced the victim onto the bed in the bedroom.

In order to be a genuine victim of rape, one should feel negative feelings – such as shame, embarrassment and disgust – and should cry, be affected negatively mentally and have changed in their behavior. Another way of achieving the status of a genuine victim, is to ‘complain immediately’. This often mean to refuse when the event is happening, thus, linking well to the rape myth of the victim as having to scream, fight or get injured – because otherwise it was not rape. But it can also mean to report to the police or to tell someone about the event. Often, regarding children, the last one is very evident and present in court, and something which the court also focuses on. In case B 2261-14 about a victimized girl by her male cousin, the court spend a lot of time discussing and evaluating this:

The plaintiff told her mother about the event (...). The parents to both plaintiffs later reported the event with one week apart from another.

Often, it is of importance for the court how soon one has acted upon the event. This, because another rape myth otherwise intervenes. If the victim has not acted soon enough, he or she

becomes questioned whether or not he or she actually might have wanted this, thus, relating to the rape myth of ‘victims cry rape when they regret having sex or want revenge’, and moreover, to the possibility that the event might be founded in false allegations. Accordingly, the court uses a specific frame for interpreting and judging who could have been victimized by rape or not.

### 3.3 Rape myths: women vs men

#### 3.3.1 Saying ‘no’ and the impression of ‘willingness’

‘Complaining immediately’ is also an occurring phenomenon regarding adults. As opposed to children, adults are often viewed as capable of taking care of themselves to a higher extent. This results in explicitly saying ‘no’, being clear about refusing, thus, mostly by screaming, fighting or getting injured, and by reporting to the police. Or, as in this case, having someone saying ‘no’ for you:

Witness A then told the defendant, in English, that “she doesn’t want your company, okay?” (...) It is clear, through information from Witness A, that the plaintiff did not want the defendant to accompany her, and that she tried to drive him away.

Escaping or being passive is negative in a court setting, since it rarely facilitates the trial in general. In case B 3435-16 about an event during New Year’s Eve, the victimized girl was judged according to this:

(...) ...nobody of the witnesses reacted towards anything abnormal.

Discourses about abnormality would be hearing someone screaming (or similar) in a reaction towards the occurring event. This tells us something about the fostering of gender norms in society. When creating males as superior and strong, and women as subordinated and vulnerable – it results in an undermined position for women, since their way of being is not accepted. Women hereby are disfavored for being just women (Crenshaw, 1995). Women as being socialized as sexually subordinated and passive as the ‘right’ way of behaving suddenly is not valid. The rules of the game is being changed by the blink of an eye. This says something about the legal system in general, and about the legal subject as masculine. In these situations, women need to change into more masculine approaches in order to fit the system. This because the objectivity of the law is colored by male subjectivity (Feenan, 2013, p 207). Thus, the legal power reflects male norms and the patriarchal structure in society. Thus, playing on circumstances of force, and enhancing factors such as putting the event in a public space, create the offender as if it could be ‘anyone’, and underline the victim’s attempt to fight back. This verifies the view of the court as coded in a masculine way.

If the victim has not acted soon enough, he or she becomes questioned whether or not he or she actually might have wanted this, thus, relating to the rape myth of ‘victims cry rape when they regret having sex or want revenge’, and moreover, to the possibility that the event might be founded in false allegations. For the court at this point, it is all about verifying or excluding the rape myth of ‘victims crying rape when they regret having sex’. In order to do this, decisions are based upon general sex roles in society and how sex drive and sexuality is being regarded. The evaluation of ‘willingness’ among adults regarding men and women, is similar to the willingness among children regarding boys and girls. If a victimized woman or man somehow has initiated an interest with the offender, the more thorough the investigation becomes regarding the myth of the victim as ‘crying rape’. This interest can be founded in perceptions of a flirtatious behavior, relating to a likability for the offender, or it can be enhanced by the victim’s consent for intercourse the first time, relating to a ‘slutty’ behavior. When this cannot be proven, the myth of ‘crying rape’ is completely excluded:

First and foremost, the circumstance that the offender and the plaintiff did not show any sexual attention to each other (...) can be proceeded into intercourse (...) is not convincing. (B 770-16)

But the myth of ‘crying rape’ is not only about the potential or lacking willingness by the victim. These sex roles, sex drives and sexualities are also regarded in relation to the offender. Men as offenders are often viewed in relation to their male role as sexually needing, as opposed to female offenders. Regardless of the victim’s gender, male offenders are viewed as more sexually needing if they have been buying sex, if child pornography has been found or if they are viewed as an ‘uncontrollable animal’ – often related to the amount of force being used. Often, this does not exclude a conviction for rape, but it could be interpreted as an excuse as to why just this man could possibly commit this crime:

(...) these sexual elements is something that the adult men wanted. (B 3195-16)

A conviction for child pornography, related to what these men like, sexually, help reinforcing the notion of men as having a higher sex drive. For female offenders, the ‘law of heteronormativity’ is present, and thus, women who are offenders are viewed as more sexually needing.

The hetero norm is also very present in rape cases regarding adults of both genders, as well as it was in rape cases regarding children of both genders. Less discussed were the belief that the victim might have wanted to have sex if the victim was a man, and the more linked male victim cases were to the perception of ‘real rape’ in terms of assault rape, force etc. Just as for girls, women’s penetration was vital and thoroughly discussed. Victimized men almost never had to make clear of exactly what was penetrating them (if something were) (B 4345-13,

B 2605-13). And the finding that oral sex sometimes was regarded as equivalent to intercourse regarding men, but never when it came to women, were also similar among children (B 2605-13 vs B 709-16 and B 3435-16). In this way, men as both adults and male make them more favorable in court. Thus, resulting in women as undermined in a victimized position, just because of the fact that they are women. And moreover, for girls experiencing more hardship for being both female and young (Crenshaw, 1995). When verifying males, and doubting females, for their certainty of what actually happened creates this tug-o-war between the sexes.

This can result in underreporting and the fear of going through with clinical examinations, trials and police reports among females. To the present day, men already go through with clinical examinations to a higher extent than women. In all five cases with victimized men, some sort of medical examination was made – either on anal damages, DNA-analysis of sperm or alcohol level. For women, four of five went to a hospital. But only in two of these cases did the visit to the clinic provide proof. In one case the clinical results was discarded due to the fact that the woman earlier had had consensual sex, and in the other case the clinical results was not found since the perpetrator had potentially penetrated her with a finger – thus, not leaving any visible marks (B 9166-16, B 3657-15). The different view regarding this, relates well to the myth of force, and the fact that the victim had to be injured or fighting causing measurable injuries. When in topicality, most non-consensual intercourses do not leave any visible marks on the body or the genitals. Does this mean that women are discriminated in court due to their physical appearance of having a vagina, or is this perception due to prejudices regarding sex type of oral, vaginal and anal sex? Reasoning about the fact that the event was not hurtful since it did not leave marks, would indicate some sort of discrimination, or at least an interpretation of certain body parts filling different purposes – such as the view of a vagina as ‘sex ready’ and rectum as ‘not appropriate for sex’. This, leading to prejudices regarding different sex types of oral, vaginal or anal sex. Further research, comparing victims of anal sex would be able to shed some light in this matter.

### 3.3.2 The impact of alcohol

Finally, rape myths in relation to alcohol will be discussed regarding adults. This area is most present with adults, and does not occur with children. Alcohol is related to the prerequisite of being in a ‘particularly vulnerable situation’, and also the rape myth that ‘people who drink alcohol or use drugs are asking to be raped’. This is why it is meticulously investigated by the court. But it differs in how it is discussed by the court between women and men. Among victimized women, the court wants to know exact amounts of alcohol:

Before she arrived to the party she had been drinking one vodka based drink. She drank more alcohol during the party. She was given a long drink with gin when she arrived and participated in a drinking game. Just before midnight she shared a bottle of champagne with some friends. (B 2403-16)

Her perpetrator's alcohol consumption during the evening was never that thoroughly investigated. The court only concluded that he:

...had been pre partying at a friend's house. He dined. He came to the party around 11 PM and drank more alcohol when he arrived. (B 2403-16)

Neither did a male victim had to endure the same thorough investigation about one's alcohol consumption as the women in the case above. In short, the court concluded that:

All people involved were intoxicated. (B 1603-09)

The lack of exact amount of alcohol among victimized men might be due to the difficulty of viewing men as vulnerable – even by alcohol. This might decrease the men's chance of being in a particularly vulnerable position due to the fact that they are men.

The interesting part is the witnesses' information about the alcohol consumption. The male friend of the victimized man informed about the exact amount of alcohol being consumed by the people. This, as if male victims gain their status as a genuine victim by verifying a vulnerable position by the amount of alcohol – as if it is some kind of proof (B 1603-09).

The female friend to the victimized woman had to confirm that the victim was a 'good girl'. She underlined the importance of never have seen the plaintiff that drunk before – as if to de-emphasize the potential stamp of being a 'bad girl' (B 3435-16).

The result indicate that it is the amount of alcohol that constitute the exposedness and vulnerability at the women, and thus, is the standard of whether or not she might have been in a 'particularly vulnerable situation'. To only state that she has been drinking a lot, makes her responsible for her own actions and fate. This shows the close connection to the rape myth that 'people who drink alcohol or use drugs are asking to be raped' – you are, alone, the only one to blame. Accordingly, she herself becomes in charge for the myth's effect since she becomes evaluated as a potential 'bad girl'. But, if she has friends (or witnesses) who can 'prove' that she actually is a 'good girl' by confirming that she usually don't drink that much, the myth's effect decreases, and so, she becomes evaluated through the usual standard of measure of 'being in a particularly vulnerable position'. Thus, for females, when it comes to alcohol in rape cases, the fight is about winning back the regular standard measurement in order to receive the right of being seen and heard, and judged, as a rape victim. Namely, to take back the status as a genuine victim.

Alcohol consumption regarding the offender is often used for excusing the behavior and actions of rape. Often, the excuses are linked to the offender's incapability of interpreting the situation and the victim's signals:

The offender's possibilities to estimate the victim's capability of actions has been limited due to intoxication. (B 2403-16)

The court, then, have to investigate whether or not the offender must have known the unwillingness with the victim to want to have sex. Mostly, the willingness in these situations are evaluated by passivity by the victim (for instance, if the offender must lift a leg in order to complete a penetration), the potential flirtatious behavior by the victim or other circumstances which, in general, would indicate a disinterest (such as if they did not know each other, thus, relating back to 'real rape' of the offender as a stranger). Often, this is examined through the strong aversion and rejection by the victim:

There has not emerged any information which would have indicated some sort of sexual interest from the plaintiff. The plaintiff has not replied to the offender's invitations, but, quite contrary, has repeatedly made clear that he did not share the offender's sexual orientation. (B 1603-09)

In this way, stating that one does not share the same sexual orientation is viewed equally to saying 'no', or as a clear expression for 'no'. Perhaps this is why victimized men, by other men, are having it easier in rape cases in general. Not sharing the same sexual orientation makes you immune to a potential 'willingness' to sex, even though you are viewed as a man – who supposedly has a large sexual appetite, if relying on gender stereotypes. Accordingly, this contribute to aggravate for heterosexual rape situations, since this immunity is missing within this kind of sexuality.

### 3.4 Special child prerequisites and rape myths

From a specific field of alcohol regarding adult rape cases, we now turn to specific fields of age, violence and consent regarding child rape cases.

#### 3.4.1 Age

In all ten child rape cases, the court evaluated the victim's age. This, because of the change in law in 2005 about the sexual self-determination for children over 15 years old – and thus, a better protection for children under 15 years old (Prop. 2004/05:45, p 9). This is due to the fact that in Sweden, people have a legal right to consensual sex when you are over 15 years old. In case B 3713-16 about a 13-year old girl, who wanted to lose her virginity, the court reasoned:

... the person's age and maturity is of great importance. (...) Nothing indicate that the plaintiff, at the time, would have been extraordinarily mature for her age. (...) Neither any of the information have

given the offender any reason to perceive the plaintiff as more mature in comparison to other girls around her own age.

A child's actual age is of importance, since child rape only can happen to people under 15 years old. But, rarely is the actual age significant. This because the perpetrator often argue that he or she did not know the child's actual age. And in order to prove this in court there has to be a specific communication about age. And even when this happens, the discussion by the court about age always ends up discussing whether or not the plaintiff has or has not lied about their age, and whether or not the offender should have had any reason to *realize* the victim's age. This realization is based upon the child's maturity, bodily development and appearance. The court discusses age accordingly:

The Court of Appeal have watched the videotaped hearing with the plaintiff and, thus, have been able to establish that her age has been difficult to estimate. In the first hearing she seemed considerably older than in reality, while, during the second hearing she appeared to have a more age-appropriate appearance. How she looked like during the event is not able to tell from the video tape. (B 883-14)

This discourse about age by the court link well to the rape myth of 'people provoke rape by the way they dress or act'. Because the closer the victim is to sexual self-determination, the more likely it is for the victim to act flirtatious, and thus, initiating the rape. And therefore, the more thorough the investigation regarding the willingness to have sex, or not, becomes. Because even if children are not supposed to consent to sex, the closer a victim is, in age, to legally have intercourse, the more it could be regarded as a mitigation in the actual rape case between the victim and the offender. In case RH 2013:12, regarding a 19-year-old woman and a 13-year old boy, the court states that:

The point of departure is that the differences between both parties regarding age and development should be small. The offender cannot be responsible when children have developed quickly and are close to their sexual self-determination, i.e. 15 years old. The offender should only be insignificantly older and have insignificantly be more developed. (...) In this case, it is clear that there is an age difference between the parties, about six years. At the same time, it is clear that this age difference cannot be equivalent to the actual circumstances regarding development and maturity with both of the adolescents. The plaintiff certainly was 13 years old at the time of the event, but information in this case says that he [the plaintiff] has acted in a way that cannot be common with that age-group, but rather, is more comparable to actions among older teenagers.

Since the prerequisite of age is not about the actual number, the more it is linked to physical appearance and bodily development when regarding maturity. The physical is often related to masculinity and femininity. In case 883-14, regarding two girls, age and appearance is very closely linked to each other:

The plaintiff's friend was thinner and gave a younger impression than the plaintiff.

This point to an evident comparison to a child's – in this case a girl's – puberty and the bodily development that is being considered regarding a child's age. The same is evident for boys, thus, coded in masculine terms. This means that a boy's body size is being evaluated being regarded as a boy or as a man to determine age. But it can also be the fact that:

... he had a powerful, deep voice. (...) and he worked at a farm and drove tractors. (B 3195-16)

Thus, relating to boy's puberty, but also manly attributes such as being strong. But there is also elements of objective age prerequisites such as the legal age of driving a tractor.

According to discourse analysis, one is to analyze things that are not said or not 'there'. Never does the court consider or discuss language as a form of maturity, and add it to the total picture of maturity. For very young children, the language and the way of expressing oneself is regarded to a higher extent than for children closer to the age of 15 and sexual self-determination. Often, to the expense that the young children not are able to give detailed information to an enough extent needed in rape cases. Words like "sort of", "lol", "brah", "bae" etc. could be measured as an indication whether or not someone is to be considered young. Although it excludes children with good vocabulary. But, if it is used as beneficial for children, and as an unaccepted tool for adults to use on children to indicate that the adults are younger than they actually are, some of these power relations might be restored.

### 3.4.2 Violence

Another special child prerequisite is the one of violence. According to the new sex law in 2005, the prerequisite of violence has been removed regarding children (Prop. 2004/05:45, p 9-13). This, because children never have to defend themselves in a sexual situation. Judgments regarding 'ruthlessness' and 'the nature of the violation' are evaluated as opposed to 'violence' and 'force'. Although, gross rape are still considering violation as a premise. This makes violence very evident in child rape cases in general. In case B 2261-14, the court evaluated the penetration of a girl:

The penetration was not painful nor unpleasant, and the plaintiff did not resist.

Regarding a boy, the court discussed as follows:

It is shown that the plaintiff, as a consequence of violence, felt pain, soreness, was bloodshed, had some skin scraped off, redness and ruptures along mucous membranes. (B 1045-16)

But violence is not only physical. It is also other circumstances, such as how many rapists there were, how many rapists that were active at the same time and what type of sex there were (oral, vaginal or anal). In case B 3195-16, with two victimized boys, the particular sexual acts

indicated that the sex was forced by adults – who know more about sex – and thus, not something a child would come up with or want:

The investigation points to the opposite – that the adults wanted these sexual acts. (...) The main rule is that the rape is considered as gross when several offenders are active.

As understood, concepts of ‘ruthlessness’ and ‘the nature of the violation’ are very much interpreted, discussed and evaluated as force. Even though the prerequisites of ‘ruthlessness’ and ‘the nature of the violation’ (which relates to force) are supposed to work in order to include more cases as rape. It also contributes to make distinctions between rape cases, such as if a particular situation is to be considered as gross. But a risk is therefore that only gross rape will be considered as rape, and that all other rape accusations will seem fading in contrast.

### 3.4.3 Consent

The amount of violence seem to be crucial when making a distinction towards consent. According to the preparatory work, children can never consent to sex (Prop. 2004/05:45, p 70). This, also, regardless the fact that children cannot initiate sex. Although, the discussion by the court still puts focus on whether or not the child might have wanted this due to its sexual self-determination and sexual development as a young teenager. One obvious factor regarding consent is mutuality. Often, mutuality is about planning the sexual event, the people are being clear about what they both want, and, respectful understandings. More invisible factors are the relationship between the parties, if one or both are virgins or are not sexually experienced, and, if both are initiating the intercourse.

The interpretation of relationship is particularly interesting because there is a highly divergent understanding of this concept regarding rape. Since children are to be considered more protected according to the preparatory work, the legislator is clear about an offender who is close to the victim can be in a particular powerful situation due to the fact that the child trust this person (Prop. 2004/05:45, p 10-11). But this makes it particularly difficult for the court, since many perceptions about the ‘real rape’ and being victimized by ‘strangers in the dark’ still persists. In case B 2261-14, regarding a girl perpetrated by her older male cousin, the court states:

The fact that the offender and the victim are cousins is not the same as being close to the victim. He [the offender] has not had any parental role which could indicate a particular position with the victim.

This indicate that this perception of the ‘stranger in the dark’ sometimes are being verified more than an incest event. This, because the perpetrator is argued to not be as close to the victim as stated. Interpreting these situations can indicate that if an offender is not a close relative it is

not too harmful. In this way, the court have a lot of power in deciding whether or not someone is to be considered as a close relative, even though they are connected to each other by blood.

Another interesting finding regarding the relationship, is the fact that the relationship to a stranger can be regarded as 'legal' if the victim wanted to pursue the intercourse. The event is illegal within a legal perspective, but the consent verify the event as less gross. The court in case RH 2013:12, regarding a victimized boy and a 19-year old woman as the offender, argues:

Consideration should be taken regarding their relationship and other circumstances, such as under which circumstances the event happened.

In this case, other circumstances were the fact that the boy wanted to have sex with her, that he was the one with sexual experience and that she was a virgin with no sexual experience – thus, guiding her. It seems like the myth of 'the stranger in the dark' does not apply when the victim wanted to have sex. Which, is remarkable, since a child is not supposed to consent to sex. This underlines the power relation between the rape myth of the 'stranger in the dark' versus incest related rape events.

### 3.5 Rape myth resistance and rape myth busters

The court rarely resist rape myths directly by reasoning about its prejudices, and the court's own prejudices. But, indirectly there is an understanding of the need for a greater protection for some people in some situations – thus, creating a sense of rape myth resistance and busting. The situations of concern are the deletion of violence regarding children, the particularly vulnerable situation regarding alcohol, and the restrictive use of consent regarding children.

#### 3.5.1 The prerequisite of violence regarding children

The court often regard the factor of violence in child rape cases, even though, in law, the court should not consider or deliberate violence regarding children due to the fact that children never have to defend itself in a sexual situation. But even if the court does discuss violence, they do underline the importance of protection of the child in rape cases:

Child rape is regulated in law under Chapter 6 Section 4 in the Penal Code, which states, as opposed to rape according to Chapter 6 Section 1 in the Penal Code, that force through violence or threat is not required. Free will and consent can, however, be significant for how the act shall be classified (...) (B 2261-14)

Even though the court discusses that the victim wanted to lose her virginity, the court still argues accordingly:

Even though the offender cannot be sentenced for going through with the intercourse against the victim's will, the event has not been characterized by complete free will and consent, which often has been a criteria when the event has been classified as sexual exploitation of children. (B 2261-14)

Thus, the court, here, makes the distinction between 'sexual exploitation of children' and 'child rape', putting the case above in the latter definition. By defining the case according to child rape and calling it for what it is, the court plays an important role when distributing power among people, in situations and between different parties. This impression underlines the reasoning about children being in a vulnerable position in relation to adults, and therefore, are in a greater need of protection.

### 3.5.2 Particularly vulnerable situation regarding alcohol

Even though many rape myths still exist – both explicit and implicit – a lot has happened during the past ten years. By changing the law to include intoxication as a form of vulnerability instead of being interpreted as a form of provocation contribute to challenge and change people's perception about rape. In case B 3435-16, regarding a young woman being perpetrated by a man during New Year's Eve, the court reasons:

The perpetrator himself does not need to classify the victim's condition as being in a 'particularly vulnerable situation'. It is sufficient that the perpetrator has had the intentions [to take advantage of the situation due to intoxication]. (...) In this case, evidence about the actual intoxication level with the victim is missing. But the investigation makes it clear that she was heavily intoxicated. (...) The fact that the plaintiff is young and was heavily intoxicated during New Year's Eve contribute to the overall verification that she was in a 'particularly vulnerable situation'.

Even though the charges in this particular case was dropped, and the offender was not convicted for committing rape, the inclusion of the definition of 'being in a particularly vulnerable situation' still led to an extensive discussion by the court regarding whether or not the offender could have known that the victim was intoxicated. Even though the new definition in law opens up for a possible way out for the offender by claiming that he did not know to which extent the victim was intoxication (which is another discussion which does not fit here) – it results in three things: 1) It contributes to a widening of the concept of 'rape' in general, as to which situations that could be included, 2) it opens up for further reasoning by the court, making them challenge their own beliefs, and, 3) it puts the blame and shame where it belongs – thus, with the perpetrator. Although alcohol often is linked to a flirtatious behavior and willingness, it also points to vulnerability. By doing this, the courts are given more options in terms of interpretations of situations involving alcohol. Thus, contributing to a wider definition of what rape can include and be defined by.

### 3.5.3 The restrictive use of consent regarding children

As seen above, the court considers consent regarding children, even though, according to the preparatory work, stated that a sexual act always means a violation towards the child (Prop. 2004/05:45, p 70). But there seem to be an understanding, from the court, that the child is in need of special protection in these situations. The court in case RH 2013:12, about a 13-year-old boy and a 19-year-old woman, reasons:

Children under 15 years old is in need of a special protection. Children is said to have an absolute protection against all forms of sexual actions, and therefore, it should always be considered as a violation of the child to expose the child to this. The point of departure for the Legislator, regarding children, has to be the fact that children never can consent to sexual actions. This point of departure is the foundation of the crime ‘child rape’ in Chapter 6 Section 4 in the Penal Code.

In this particular case, the court discussed a lot about the offender’s immaturity, the victim’s maturity, the clear initiative from the victim, the fact that the offender did not have any sexual experience, and, the fact that the victim did not seem disturbed by the event, but rather told his friends about the sexual activities (as if bragging). Therefore, the court, firmly, underlines the seriousness of these types of crimes. The fact that a child has consented – even though it should not be able to (but that’s a different discussion, which we do not have space to address here) – and still convict for child rape is significant in order to break the power relation between children and adults, and in order to move away from the ‘rape myth’-trap of discussing if some factors actually can verify the rape. Since consent from a child only affect the seriousness of the crime, it is not a prerequisite for dismissal. In this way, the court clearly contribute to the resistance of rape myths to a much higher extent for children than for adults.

## 4 DISCUSSION AND CONCLUSIONS

Below follows a short summary of the main findings, linked back to the overall research questions. Also, a summarized discussion is incorporated. Finally, some notes regarding future research are included.

### 4.1 Summary of the findings

This thesis has discussed how rape myths appear in trials involving children, trying to answer the question “Are children viewed in the same way as adults according to these myths in rape cases – or differently, and how are these myths manifested?” Moreover, there has also been a discussion regarding the research question “Does rape myths differ between sexes – in that case, how and why?”

When comparing child rape cases with adult rape cases, often children are viewed and measured according to adult standards. For being a victim, they are in an undermined position from the start. And just as adults, children's credibility is thoroughly discussed. Moreover, the perception of 'real rape' by the court is evident the more rape myths they regard. The amount of violence used, to which extent the victim refused or showed their refusal, and how 'willing' or consensual the victim was are factors that reveals the court's usage of 'real rape' when evaluating rape cases. This, even though children are not supposed to be able to consent, and the fact that the prerequisite of violence is removed regarding children. But also, how the victim acted, felt, told their story and how soon from the event they spoke up had significant impact on the court's judgements. But children are also viewed a bit differently from adults. In all child rape cases, age and appearance (maturity) were discussed by the court, which never was discussed regarding adults. Often, the age prerequisite further verified the children's undermined position. But it was also used as a rape myth resistance – which made it clear that the court understood the children's vulnerable position, and therefore, the extended protection in law.

When comparing sexes in relation to rape myths, the conception of 'willingness' for both females and males are discussed. If a victimized female or male somehow has initiated an interest with the offender, the more thorough the investigation becomes regarding the myth of the victim as 'crying rape'. This interest can be founded in perceptions of a flirtatious behavior, relating to a likability for the offender, or it can be enhanced by the victim's consent for intercourse the first time, relating to a 'slutty' behavior. But while males seem to have a higher sex drive, females seem to be more sexually needing. Another difference between the sexes regards the type of sex that is considered to be associated with rape. There seem to be a hierarchy of sex types with anal penetrating sex as highest, vaginal penetrating sex, and last, oral sex. But regarding males victimized by males, sex type seemed irrelevant due to the fact of sexual identity of homosexual and heterosexual – where homosexual events seemed to be judged as rape to a higher extent by the court. This enhances the notion of the legal subject as masculine, thus, resulting in men as both adults and male make them more favorable in court. Thus, resulting in women as undermined in a victimized position, just because of the fact that they are women. And moreover, for girls experiencing more hardship for being both female and young. Regarding 'real rape' and conceptions of 'being injured' and refusing by clearly stating that 'one is heterosexual in a homosexual rape situation', males are generally viewed as more trustworthy and believed to be victimized due to this "male subjectivity" and their prof in form of medical examinations and credibility. This was also the case in alcohol-related cases, even

though the court also showed beliefs in myths like ‘since he is a man he should be able to defend himself against rape’ – thus, linking to the notion of males as ‘unrapable’.

#### 4.2 Discussion and conclusions

As seen above, the justice system does not seem child proof since children under the age of 15 years old are viewed, judged and evaluated within the same frames as adults. Adult rules, adult norms, adult conceptions, adult prejudices and adult myths seem to be the measurements. The fact that adult people working within the justice system make them also bring their own myths, values etc. in a legal context. But these people are also bound to structures, such as the structure of patriarchy in society. This structure affects females negatively. This, because girls always are to be found in a disadvantage position due to the fact of being both a child and female. In a patriarchal society, women and men are fighting in a tug-o-war within juridical settings in order to win their case. This might force women into using the myth of ‘real rape’ as a tool to increase the chances of being believed. This could mean that females tries to achieve the ease which victimized men have. Consequently, females might try to play on ‘real rape’-myths of for instance violence in order to achieve a higher genuine victim status. This could in best case lead to easier trials for women, but on male premises and male grounds – thus, completely ignoring the spectra of ‘men’s violence against women’. In worst case, it could fuel the beliefs and myths of females as falsely reporting rape, and the women as not credible since there might be a way for her to cry rape. In that case, all parties would lose.

Against this background, all rape myths can be seen as a part of a spider diagram which contribute to the credibility of the fact that a rape occurred. The overall issue is that females in all these dimensions of the spider diagram is to be found in disadvantaged positions (regardless of the credibility as a victim, if one gave consent, if violence were used or if one was intoxicated). Because of this, it is of importance to found and formulate laws in order to break this power imbalance, and to work as a tool for busting and resisting myths to achieve a long term change for children and females in courts.

#### 4.3 Future research

This thesis has focused on rape and rape myths among children (up to 15 years old) and adults (18 years old and more). It would be interesting to see which reasoning’s by the court that would be applicable for people 15 years old and one month to 17 years old and 11 months. Would they be regarded as children according to the rule in law about the limit of 18 years as being adults, or would they be regarded as adults according to their sexual self-determination at 15 years old?

Further, the gender of the judges might shed some light over perceptions from society regarding rape myths in order to detect similarities and differences in discussions in court from women and men on rape.

Moreover, the perception of sex types of oral, vaginal and anal sex seem to play an important part regarding rape myths. It would therefore be of interest to investigate how the type of sex would be a factor in how the victim is perceived, regarding rape myths and regarding gender (between females and males).

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## Appendix 1

Table 1 Commonly held rape myths (adapted from Saunders, 2012)

	Narratives based on myths about rape	Alternative narratives
1	Rape occurs between strangers in dark alleys	<ul style="list-style-type: none"> <li>- The majority of rapes (66%<sup>1</sup>) are committed by persons known to the victim</li> <li>- Victims are often raped in their homes</li> </ul>
2	People provoke rape by the way they dress or act	<ul style="list-style-type: none"> <li>- Dressing attractively and flirting can be an invitation for attention, admiration, or consensual sex. It is not an invitation for rape</li> </ul>
3	People who drink alcohol or use drugs are asking to be raped	<ul style="list-style-type: none"> <li>- Being vulnerable does not imply consent</li> <li>- If a person is unable to give consent because they are drunk, drugged or unconscious, it is rape</li> </ul>
4	Rape is a crime of passion	<ul style="list-style-type: none"> <li>- Forcing someone to have sex against their will is about power, control, and violence – not sexual desire, romance, or passion.</li> <li>- Many rapes are premeditated and planned</li> <li>- Many rapists fail to get an erection or ejaculate</li> </ul>
5	If she didn't scream, fight or get injured, it wasn't rape	<ul style="list-style-type: none"> <li>- Victims in rape situations are often legitimately afraid of being killed or seriously injured and so co-operate with the rapist to save their lives</li> <li>- The victim's perception of threat influences their behaviour often leading them to freeze or go limp</li> <li>- Rapists use many manipulative techniques to intimidate and coerce their victims</li> <li>- Non-consensual intercourse doesn't always leave visible signs on the body or the genitals.</li> </ul>
6	You can tell if she's 'really' been raped by how she acts	<ul style="list-style-type: none"> <li>- Reactions to rape are highly varied and individual</li> <li>- Many women experience a form of shock after a rape that leaves them emotionally numb or flat - and apparently calm.</li> </ul>
7	Women cry rape when they regret having sex or want revenge	<ul style="list-style-type: none"> <li>- Data from 2643 cases suggests that the level of false reporting is somewhere between 8% (a case recorded as a false allegation by the police) and 0.2% (cases where an individual is arrested for a false allegation) (Kelly, Lovett, &amp; Regan, 2005).</li> </ul>
8	Male rape is an offence that takes place between gay men	<ul style="list-style-type: none"> <li>- Rape is not about sexual desire, consequently men who rape other men are often heterosexual. Their victims are often heterosexual too.</li> </ul>
9	Prostitutes cannot be raped	<ul style="list-style-type: none"> <li>- Prostitutes have the same rights with regards to consent as anyone else: the transactions they negotiate with clients are for consensual activities, not rape.</li> </ul>
10	If the victim didn't complain immediately it wasn't rape	<ul style="list-style-type: none"> <li>- The vast majority (estimated at 90%) of victims <i>never</i> report the rape to the police</li> <li>- Trauma, feelings of shame, confusion, or fear of the consequences can all delay reporting to the police.</li> </ul>