

Criminal Liability in the Case of David

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David may the criminal liability for raping Whitney after intoxicating her with a sedative. The following factors, i.e., (I) consent in sexual contact, (II) intoxication and criminal liability, and (III) sexual assault, have been critically analyzed in David's case in order to establish his potential criminal liability.

The Scenario:

David started kissing Whitney on the sofa. It might have given him the impression that Whitney was giving consent to have sexual contact with her. However, this might not be the case. Whitney might have, for one reason or another, stopped David from going 'too far' as it was the first time for them to kiss each other. Most importantly, Whitney did not know David very well. Therefore, despite having a soft corner for him, she might have thought to give up their relationship before going too far into it. David, on the other hand, left his house with the intention of finding a girl to have sexual intercourse with, and for this reason, he went to the club with his two other friends. From the club, David picked Whitney. She was there with her two girlfriends. It is worth mentioning here that Whitney was not a prostitute who was present at the club to find a potential client. She was only there to have fun with her girlfriends. One having a nice conversation with the boys, the girlfriends decided to invite them to their place for a cup of coffee. On reaching the house, David and Whitney started kissing on the sofa. However, David added a sedative to the coffee of Whitney. After drinking the sedative, Whitney became drowsy, and David took her to her bedroom with the intention of having sexual intercourse with her, and he did have it. This situation raises the most critical element of sexual intention in an intimate relationship.

Factor (I): Consent in Sexual Contact

Sexual consent means giving permission to someone to have sexual contact with him or her. It also means that the sexual act has happened because the parties involved in the act wanted it to happen. Therefore, it is mandatory to obtain sexual consent from the other party before engaging with him or

her in the act; this consent must be taken every time. Moreover, one must not engage in the process of sexual activity of any sort without obtaining consent from the other party. Engaging in sexual activity with the other party without their consent results in either sexual assault or rape, depending on the circumstances. It must be given by both or all parties in the contract and freely and enthusiastically. Most importantly, sexual consent must be given every time and on every sexual activity.

The consent can best be taken through verbal conversation. For instance, a partner must ask the other partner if he or she would like to be touched in a particular manner. Similarly, engaging in foreplay or an initial act does not indicate that the person has consent to have sexual intercourse. For example, a partner might like to kiss or touch the genitals of the other partner, but it does not mean that he or she has given sexual consent for oral sex or penetrative sex. The right of the sexual consent of the partner must be respected. In Michael's case, Whitney consented to kissing. She did not consent to have sexual intercourse with him. Therefore, Michael failed to obtain sexual consent from her. Therefore, David has created a criminal liability under Section 74 of the Offences Act 2003.

Factor (II): Intoxication and Criminal Liability

The issue of intoxication complicates the matter. As discussed earlier, sexual consent must be given by both or all parties in the contract freely, enthusiastically, and given every time and during every sexual activity. Moreover, sexual consent cannot be obtained when the person is under intoxication because his or her legal capacity to enter into a contract is compromised. The involvement of the element of intoxication in the situation invariably affects the interpretation of sexual signals by David. The reason lies in the fact that it becomes difficult to decide if those signals were given consciously or unconsciously by Whitney, who had been deliberately drugged by David. He claimed that he was under the delusion that Whitney had given him the consent while, in objective reality, it was not given.

Factor (III): Sexual Assault or Rape

Depending on the circumstances, engaging in sexual activity with the other party without their consent results in either sexual assault or rape. Both of these acts are serious. The difference between the two acts is explained and elaborated with the only purpose of differentiating between the two different types of offenses. Sexual assault occurs by penetrating the vagina, anus or mouth with anything other than the penis of a person, whereas rape occurs by penetrating the organs with a penis. In the case of David, rape has occurred because he had sexual intercourse with Whitney. Therefore, David may have criminal liability for raping the girl. The first four sections of the Sexual Offences Act 2003, with a primary focus on rape, deal with the sexual offense of a non-consensual nature. (Legal Information Institute, n.d.)

The Act also provides a list of some aggravating factors in the act of rape by a person. Among these

factors is the factor of use of drugs, alcohol or other substances. The purpose of consumption of these intoxicating drugs must be to facilitate the offense. It indicates that the consumption must not be voluntary. The victim must have consumed the drugs either forcefully or through deception. In the case of David, Whitney was given the sedative without her knowledge.

The consumption level of the drugs was high enough to make her drowsy, and thus, she lost her legal capacity to give David her sexual consent while David pursued the act under the delusion that Whitney was ready to be involved in the act of sexual intercourse because they started kissing each other on the sofa in the dining room before she was taken to the bedroom by him. It would have constituted a reasonable belief of sexual consent if David had not slipped the sedative in Whitney's cup of coffee, such as in DPP vs. Morgan, where the defendant called his friends over to rape his wife and told them her struggle to stop the act was a part of her enjoyment and must not be seen as lack of consent. The men were accused of rape, but it was held by the court that three men had genuine and reasonable belief that the sexual consent was given by the wife. However, in David's case, he engaged in criminal activity with the purpose of facilitating the offense. As per the law, any offender of rape accompanied by aggravating factors will be sentenced to jail for a period of at least eight years if the victim is more than sixteen years old.

The Case of Prince

Prince may have the criminal liability of giving Cindy the impression that he is some famous TV celebrity and, thus, alluring her into having a sexual encounter with him. Moreover, he transmitted a sexually contract disease known as Gonorrhoea to Cindy as well. The following factors, i.e., (I) consent in sexual contact, (II) sexual assault or rape, (III) misrepresentation of facts, and (IV) sexual transmission of infection, have been critically analyzed in Prince's case in order to establish his potential criminal liability.

The Scenario:

Prince, along with his two other friends, went to a club with the intention of picking girls for having sexual intercourse. In the club, he met Cindy, who was there with two of her girlfriends named Whitney and Tina. Prince, while conversing with Cindy, gave her the impression that he was the famous TV celebrity, Prince Jones. Cindy happened to be a big fan of the celebrity. Therefore, she developed a natural inclination towards Prince, who further told her that he would take her with him to the shooting sets and get her to meet with other celebrities. Moreover, he told Cindy that he would like to start a relationship with her. All of this information and promises were not true. Prince was only trying to lure Cindy into him with the purpose of having sexual intercourse with her. He remained successful in his attempts, and Cindy, along with his girlfriends, invited Prince and his two male friends, Michael and David, to their place over a cup of coffee. As soon as they reached their place, Prince started making sexual advances towards Cindy, which she freely and enthusiastically accepted

under the influence of false information and consented to him having sexual contact with her. However, during sexual intercourse, Prince transmitted Gonorrhoea to Cindy, which is an infection that can be sexually transmitted between the mating couple.

Factor (I): Consent in Sexual Contact

Despite the fact that Cindy took Prince into her bedroom and they both had sexual intercourse as Cindy consented to him having sexual contact with her, Prince failed to obtain legally acceptable sexual consent from Cindy. It has been discussed that sexual consent means giving permission to someone to have sexual contact with him or her. It also means that the sexual act has happened because the parties involved in the act wanted it to happen. It has already been established that sexual consent must be given by both or all parties in the contract freely, enthusiastically, and given every time and during every sexual activity. Therefore, it is mandatory to obtain sexual consent from the other party before engaging with him or her in the act. The timing is critically important because consent must be obtained before engaging in the act of sexual contact. In the case of Prince, the situation is a little tricky. In the case of *R vs. Linker*, the prostitute had sexual intercourse with a person under the impression that she would be paid for it. However, the individual went away without paying. She sued him for the money. However, the court did not decide in her favor. The Court of Appeal held that the element of fraud was not present in the case. The court further held that the consent of the woman was important in this scenario, and as she had established sexual contact with him despite having a false persona about him paying for the intercourse, she was willfully engaged in the act. Therefore, there is no fraud and she cannot claim money on it. Seeing the case of Prince under the light of this case, he has not created a criminal liability under Section 74 of the Offences Act 2003.

Factor (II): Misrepresentation of Facts

As pointed out earlier, there is a difference between rape and sexual assault. Since the parties had been engaged in sexual intercourse, sexual assault was out of the question. However, in the case of Prince, rape of Cindy has not been committed. It is the concealment of facts since he concealed his identity and gave Cindy the impression that he is a famous TV celebration of whom she had always been a big fan, he has created on him the criminal liability of causing a person to engage in sexual intercourse on the grounds of misrepresentation. The element of inducement is present in the context. As discussed earlier, sexual consent must be given by both or all parties in the contract freely, enthusiastically, and given every time and during every sexual activity. Moreover, sexual consent cannot be lawfully obtained on misrepresentation of facts. However, Cindy entered into the act of sexual intercourse with the Prince of her will. Therefore, it can be concluded that Prince has not created a criminal liability under Section 74 of the Offences Act 2003. Moreover, there is the aggravating element of abuse of the trust of a person as well as the aggravating factor of the knowledge of having the sexually transmittable infection. Although the second factor has to be proven

in court, it can be assumed, at this point of discussion, that Prince knew about being infected by Gonorrhoea and still had sexual intercourse with Cindy.

Factor (III): Sexual Transmission of Infection

After having sexual intercourse with Prince, Cindy realized that she had contracted Gonorrhoea, which is a sexually transmittable infection. The situation is again tricky for Prince; there can be two interpretations of this situation. Firstly, Prince knew that he had an infection which is sexually transmittable. Secondly, Prince did not know about having the infection. *R v Clarence (1889)* is the case which presents the first interpretation of the situation. In this case, the defendant knew that he was infected with Gonorrhoea but still had sexual intercourse with his wife and transmitted the disease to her. He was convicted under Section 20 and Section 47 of the Offenses Against the Person Act 1861. However, in the appeal, the conviction was quashed. The court held that the wife had given her sexual consent to her husband. According to the decision, her lack of information with regard to the infection does not play a role in this situation, and it can also not be argued that she would have taken back her consent on knowing about the infection. Based on this discussion, Prince cannot be criminally held liable for transmitting the infection to Cindy because she sexually consented to him.

The Case of Michael

Michael may have the criminal liability of raping Tina after holding a knife to her and, thus, forcing her into the act of sexual intercourse. The following factors, i.e., (I) consent in sexual contact, (II) sexual offenses and violent crimes, and (III) sexual assault or rape, have been critically analyzed in Michael's case in order to establish his potential criminal liability.

The Scenario:

Michael went to the club with Prince and another friend named David. All three of them had the intention of picking the girls to have sexual intercourse with them. Along with his friends, he came to the place of the girls on the invitation of having a cup of coffee with them. However, he did not lure the girl into him using misrepresentation of facts, nor did he add sedatives to her drink. In fact, he used a knife. Tina realized on entering the room and seeing the sedative pills on the table that Whitney had been sedated and taken into the bedroom by David, who was kissing her on the sofa when she went into the kitchen with Michael to make coffee. On realizing the serious situation, she asked him to get out of the apartment but was intervened midway by Michael, who took out a knife and held it on her head. This sudden violent act made Tina nervous and frightened. She decided to surrender in front of Michael and, thus, consented to have sexual intercourse with him. Michael raped her while holding a knife in his hand.

Factor (I): Consent in Sexual Contact

It has been discussed that sexual consent means giving permission to someone to have sexual contact with him or her, which means that the sexual act has happened because the parties involved in the act wanted it to happen. It has also been discussed previously that sexual consent must be given by both or all parties in the contract. In the case of Michael, the consent only flowed from the end of Michael and not Tina, despite the fact that she decided to have sexual intercourse with him because she was forced to engage in the act. Furthermore, sexual consent must be given freely and enthusiastically. In the case of Michael, Tina did not give her consent freely, nor was she enthusiastic about it. Moreover, sexual consent must be given every time and during every sexual activity. This element was also absent in Michael's case. Lastly, it is mandatory to obtain sexual consent from the other party before engaging with him or her in the act. The timing is critically important because consent must be obtained before engaging in the act of sexual contact. In the case of Michael, sexual consent is lacking due to the fact that Michael obtained it from Tina by holding a knife to her head. She was under due influence and pressure to give her consent to whatever Michael wanted at that moment. Without sexual consent, the act of sexual contact, depending on the circumstances, either result in rape or sexual assault. Therefore, Michael has created a criminal liability under Section 74 of the Offences Act 2003.

Factor (II): Sexual Assault or Rape

Depending on the circumstances, engaging in sexual activity with the other party without their consent results in either sexual assault or rape. In the case of Michael, rape has occurred. Tina never sexually consented to Michael. She was asking him to get out of the apartment, knowing that David had added sedatives to Whitney's coffee. However, Michael took out the knife and threatened to have sexual intercourse with her. She agreed as she became extremely nervous. The aggravating matter of sustained pressure is involved in this case as well.

Factor (III): Sexual Offences and Violent Crimes

Sexual consent cannot be taken on the edge of a knife. It has been discussed earlier that sexual consent must be given by both or all parties in the contract, freely, enthusiastically, and given every time and during every sexual activity. Moreover, sexual consent cannot be obtained by holding a knife on the head of an individual because the consent must be freely and enthusiastically made by both or all parties in the contract. Later, Michael claimed that he was under the delusion that Tina had given him the consent while, in objective reality, it was not given. Therefore, Michael has been involved in the trinity of rape, coercion and non-consent. The distinction between the three without a difference is difficult to make. Therefore, the Sexual Offences Act 2003 provided a comprehensive definition of consent. According to the Act, a female can consent only when she agrees by choice and possesses the capacity and freedom to make that choice. In the case of Michael, the situation is

different. Tina did not sexually consent to him with her choice. She was forced to make that choice. Furthermore, she did not possess the capacity and freedom to make that choice or to change it due to the knife being held upon her by Michael.

Concluding Summary

David may have the criminal liability of raping Whitney after intoxicating her with a sedative. Prince may have criminal liability for raping Cindy after giving her the impression that he is a famous TV celebrity. Michael may have the criminal liability of raping Tina after holding a knife to her and, thus, forcing her into the act of sexual intercourse. All three of the friends had clear intention of having sexual intercourse with the girls as they went to the club with the intention of finding girls to have sexual intercourse with. (Legal Information Institute, n.d.)

Two of the girls did not consent to the sexual intercourse willfully, freely and enthusiastically. Whitney was sedated, and a person under intoxication is not capable of giving consent; her legal capacity to give consent had been compromised. Tina was forced to have sexual intercourse with Michael while he held a knife on her head. Cindy, however, gave sexual consent under the misrepresentation of facts. Still, she willfully gave sexual consent to the Prince, and it cannot be argued that she would have changed her decision on knowing about the fact the Prince was infected with Gonorrhoea. Thus, two of the girls had been raped under different circumstances, whereas Cindy was not raped because she gave her sexual consent. (Byars & Stanberry, 2018)

References

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